

**WISCONSIN DEPARTMENT OF REVENUE
DIVISION OF INCOME, SALES, AND EXCISE TAX**

NOTICE OF PROPOSED GUIDANCE DOCUMENTS

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance document listed in the table below.

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

DEADLINE FOR SUBMISSION

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

Document Number	Document Title
100204	Sales and Use Tax Treatment Computer - Hardware, Software, Services (October 1, 2009 and Thereafter) – Common Questions

State of Wisconsin
Department of Revenue


Sales and Use Tax Treatment Computer - Hardware, Software, Services (October 1, 2009 and Thereafter)

This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats.

For Sales Occurring on October 1, 2009 and Thereafter

Sales of computer hardware, software or computer related services from March 6, 2009 through September 30, 2009.

Sales of computer hardware, software or computer related services prior to March 6, 2009.

A summary of the tax treatment of sales of computer software and computer software maintenance contracts both prior to and on or after October 1, 2009,  is available as a chart.

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1. **What's new as of October 1, 2009?**a. **Sourcing Rules (For Determining the Location Where a Sale Takes Place)**

Sales and purchases of tangible personal property (including prewritten computer software), items, property, and goods under sec. 77.52(1)(b), (c), and (d), Wis. Stats., (generally referred to in this Common Question as "items, property, and goods") and taxable services (such as services to prewritten computer software or services to computer hardware), are subject to Wisconsin sales and use taxes when the sale or purchase is sourced to (i.e., takes place in) a location in Wisconsin, as provided in sec. 77.522, Wis. Stats.

In general (see exceptions, below), the location of a sale or purchase (but not a lease, rental or license) is determined under sec. 77.522(1)(b), Wis. Stats., as follows:

1. If a purchaser receives the product at a seller's business location, the sale is sourced to that business location.
2. If a purchaser does not receive the product at a seller's business location, the sale is sourced to the location where the purchaser, or the purchaser's designated donee, receives the product, including the location indicated by the instructions known to the seller for delivery to the purchaser or the purchaser's designated donee.
3. If the location of a sale of a product cannot be determined under 1. or 2., the sale is sourced to the purchaser's address as indicated by the seller's business records, if the records are maintained in the ordinary course of the seller's business and if using that address to establish the location of the sale is not in bad faith.
4. If the location of a sale of a product cannot be determined under 1., 2., or 3., the sale is sourced to the purchaser's address as obtained during the consummation of the sale, including the address indicated on the purchaser's payment instrument, if no other address is available and if using the address is not in bad faith.
5. If the location of a sale of a product cannot be determined under 1. to 4., including the circumstance in which the seller has insufficient information to determine the locations under 1. to 4., the location of the sale is determined as follows:
 - a. If the item sold is tangible personal property or an item or property under s. 77.52(1)(b) or (c), the sale is sourced to the location from which the tangible personal property or item or property under s. 77.52(1)(b) or (c) is shipped.
 - b. If the item sold is a digital good or computer software delivered electronically, the sale is sourced to the location from which the digital good or computer software was first available for transmission by the seller, not including any location that merely provided the digital transfer of the product sold.
 - c. If a service is sold, the sale is sourced to the location from which the service was provided.

For purposes of the sourcing rules:

- The term "product" includes tangible personal property, items, property, and goods, and services.
- The term "receive" means taking possession of tangible personal property or items or property under sec. 77.52 (1) (b) or (c), Wis. Stats.; making first use of services; or taking possession or making first use of digital goods under sec. 77.52 (1) (d), Wis. Stats., whichever comes first. 'Receive' does not include a shipping company taking

possession of tangible personal property or items or property under sec. 77.52 (1)(b) or (c), Wis. Stats., on a purchaser's behalf.

Special sourcing rules apply in the following situations:

- The sourcing of payments for the sale of direct mail is determined as follows:

For sales occurring October 1, 2009 through May 26, 2010, refer to sec. 77.522(1)(c), Wis. Stats., as created by 2009 Wis. Act 2 (see Section 384 of the Act).

For sales occurring On May 27, 2010 and thereafter, refer to sec. 77.522(1)(c), Wis. Stats., as affected by 2009 Wis. Act 330.

- The sourcing of payments made under a lease, rental, or license is determined under sec. 77.522(3), Wis. Stats. (Note: The specific provisions of sec. 77.522(3), Wis. Stats., pertaining to the sourcing of payments for leases, rentals, and licenses of prewritten computer software and the sourcing of payments relating to term licenses and subscriptions for prewritten computer software are discussed under the applicable headings that follow, below.)
- The sourcing of payments for telecommunications services is determined under sec. 77.522(4), Wis. Stats.
- The sourcing of sales by "retail florists" is determined under sec. 11.945(5), Wis. Adm. Code (June 2018 Register).

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i. **Sourcing of Prewritten Computer Software**

Note: Also see [Sourcing of Computer Software Term Licenses and Software Subscriptions](#)

1. When prewritten computer software is received by the purchaser at a business location of the seller, the retail sale is sourced to that business location.
2. When prewritten computer software is not received by the purchaser at a business location of the seller, the retail sale is sourced to the location(s) where receipt by the purchaser occurs. Receipt may occur at multiple locations if the seller delivers the software to multiple locations. The transaction is sourced to those locations if the seller receives delivery information from the purchaser by the time of the invoice.

Example 1: Seller ships multiple hard copies of prewritten computer software to multiple locations of Purchaser. The retail sale is sourced to those locations indicated by the instructions for delivery to each jurisdiction in which Purchaser receives the prewritten computer software.

Example 2: Seller electronically delivers copies of the prewritten computer software to multiple locations of Purchaser. Seller has the information identifying the multiple locations for the electronic delivery of the prewritten computer software. Seller sources the retail sale to each jurisdiction where Purchaser receives the prewritten computer software.

Example 3: Seller electronically delivers prewritten computer software to Purchaser's server in State A. Seller has information identifying the location of the server in State A. Purchaser subsequently downloads copies of the prewritten computer software to its multiple locations. Seller sources the

retail sale to the jurisdiction where Purchaser receives the prewritten computer software, which is the location of the server in State A. Seller has no responsibility to source the retail sale to any other state.

Example 4: Purchaser is headquartered in State A and also has locations in States B and C. Seller electronically delivers prewritten computer software to Purchaser's server located in State B. Seller has information identifying all of these locations. Purchaser's prewritten computer software will be accessed by its employees in all three states. Seller sources the retail sale to the jurisdiction where Purchaser receives the prewritten computer software at the location of the server in State B. Seller has no responsibility to source the retail sale to any other state.

3. When 1. and 2. do not apply, the retail sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of business when use of this address does not constitute bad faith.

Example: Seller electronically delivers prewritten computer software to an unknown location(s) of the Purchaser. The Seller has information identifying an address that is maintained in the Seller's files for business purposes. The Seller sources the retail sale to the jurisdiction for the address of the business location of the Purchaser available in the Seller's business records.

4. When 1., 2., and 3. do not apply, the retail sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the retail sale, including the address of a purchaser's payment instrument if no other address is available when this address does not constitute bad faith.

Example: The Seller makes retail sales of prewritten computer software by allowing Purchasers to electronically download the prewritten computer software from Seller's website. In connection with the retail sale, the Purchaser discloses an address associated with the credit card used to pay for the prewritten computer software. This is the only location information the Seller receives from the Purchaser in connection with the retail sale. The Seller sources the retail sale to the jurisdiction of the address for the Purchaser associated with the credit card payment.

5. When neither 1., 2., 3., or 4. apply, including circumstances in which the seller is without sufficient information to apply 1., 2., 3., or 4., then the retail sale is sourced to the jurisdiction for the address of the location from which the prewritten computer software was shipped or, if delivered electronically, was first available for transmission by the seller. "First available for transmission" means the location from which the software originated, irrespective of where it is routed, including intermediary servers.

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ii. **Sourcing of Computer Related Repair Services and Repair Parts**

1. If the purchaser receives the service and/or repair parts at a business location of the seller, the retail sale is sourced to that business location of the seller.

Example: Purchaser drops off a laptop computer at Seller's location for the purpose of having it inspected to determine the source of a fuzzy screen. Seller advises Purchaser that the estimated charges for parts and labor to repair the laptop are \$500. Purchaser decides to not repair the laptop, and returns to Seller's location to pick up the laptop and pay for the inspection service. The retail sale of the service is sourced to Seller's location.

2. When the service and/or parts are not received by the purchaser at a business location of the seller, the retail sale is sourced to the location(s) where receipt by the purchaser occurs, as shown in the examples below:

Example 1: Purchaser receives computer services and/or repair parts at Purchaser's location. The retail sale of the computer services and/or repair parts is sourced to Purchaser's location.

Example 2: Seller sends a computer repair person to two of Purchaser's locations to perform troubleshooting of Purchaser's printers. One of the Purchaser's locations is in Wisconsin, and the other location is outside Wisconsin. Seller bills Purchaser at an hourly rate for the work performed by its employee. The Seller's employee tracks his time based on the work performed at each location. The Seller shall source the retail sale to Wisconsin in accordance with the time spent at the Wisconsin location.

Example 3: Purchaser, with locations in both Wisconsin and outside Wisconsin, drops off 2 laptop computers for repair service at the Seller's location in Wisconsin. Purchaser instructs Seller to ship one of the repaired laptops to its location in Wisconsin, and the other repaired laptop to its location outside Wisconsin. Seller keeps track of the parts, labor, and shipping charges related to each laptop. Seller shall source the retail sale to Wisconsin in accordance with the charges related to the laptop that is shipped to Wisconsin.

Example 4: Purchaser contacts Seller regarding an issue with Purchaser's computer. Seller is able to remotely inspect Purchaser's computer using the internet. Seller determines that the computer's operating system software is corrupted. Seller, using the internet, reloads the operating system software onto the computer.

- a. If Seller did not sell the original operating system software and/or the computer to Purchaser, Seller sources the sale as provided in the general sourcing hierarchy under sec. 77.522(1)(b)1. to 5., Wis. Stats.
- b. If Seller sold the original operating system software and /or the computer to Purchaser, and Seller sourced the payment for the operating system software and/or computer under sec. 77.522(1)(b)2., Wis. Stats.:
 1. If Seller receives information from the purchaser indicating that the location of the software or computer has changed, the payment made in connection with the inspection and reloading of the operating system software shall be sourced to such new location.

2. If Seller has not received information from Purchaser indicating a change in the location of the operating system software and/or computer, sourcing the payment made in connection with the inspection and reloading of the operating system software to the same location where the sale of the operating system and/or computer payment was sourced will not constitute bad faith.
- c. If Seller sold the original operating system software to Purchaser, and Seller does not have information as to the software's primary location, the payment made in connection with the inspection and reloading of the operating system software is sourced as provided in sec. 77.522(1)(b)3., 4., or 5., as the case may be.

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iii. **Sourcing of Computer Software Maintenance Contracts**

1. The initial retail sale of a computer software maintenance contract sold by the seller of the software is sourced to the same address or addresses as the retail sale of the software.
2. The retail sale of a computer software maintenance contract sold after the retail sale of the underlying software, the renewal of a computer software maintenance contract, or the retail sale of a computer software maintenance contract by a seller other than the seller of the software, is treated separately from the retail sale of the underlying software and is sourced as provided in the general sourcing hierarchy under sec. 77.522(1)(b)1. to 5., Wis. Stats. However, if sec. 77.522(1)(b)1. and 2., Wis. Stats., do not apply, sourcing a retail sale of a renewal of a computer software maintenance contract to an address where the purchaser received the underlying software will not constitute bad faith so long as the seller has not received information from the purchaser indicating a change in the location of the underlying software.

Example: Purchaser buys a 1-year software maintenance agreement for prewritten computer software from Seller. Seller did not sell the software to Purchaser. Purchaser informs Seller that it received the software in State B. At the end of the first year, Purchaser renews the agreement for a second year, but does not inform Seller as to the physical location of the software. Seller sources the payment for the renewal to State B. Seller's sourcing of the payment to State B is not in bad faith, since this is the location where Purchaser received the software, as provided to Seller for the previous year's payment, and Purchaser has not informed Seller that the location of the software has changed.

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iv. **Sourcing of Software Term Licenses and Software Subscriptions**

"Software subscription" means a transaction requiring additional payments for updates to prewritten computer software. "Software term license" means a transaction where the purchaser's right to continue to use prewritten computer software is dependent on periodic payment.

1. Initial payments made in connection with a software term license or subscription shall be sourced in accordance with sec. 77.522(1)(b)1. to 5., Wis. Stats.
2. Subsequent periodic payments on the software subscription or software term license are sourced as follows, if the seller sourced the initial payment under sec. 77.522(1)(b)2., Wis. Stats.:

- a. If the seller receives information from the purchaser indicating that the location of the underlying software has changed, a subsequent payment made in connection with a software term license or renewal of a software subscription shall be sourced to such new location.
 - b. If the seller has not received information from the purchaser indicating a change in the location of the underlying software, sourcing a subsequent license payment made in connection with a software term license or the renewal of a software subscription to the same location where the initial payment was sourced will not constitute bad faith.
3. When the seller does not have information as to the software's primary location, the payment is sourced as provided in sec. 77.522(1)(b)3., 4., or 5., Wis. Stats., as the case may be.

Example 1: Seller electronically delivers to Purchaser a copy of prewritten computer software on a subscription basis. The software is a product designed to detect online threats. In order to remain effective, the software must be constantly updated with new threat definitions. The subscription provides the Purchaser with electronically delivered updates for a one year period. Purchaser may renew the subscription annually. Seller has no information as to the location where the software was electronically delivered. However, the purchase order discloses a "ship to" address. Seller sources the sale to the "ship to" address shown on the purchase order as such address constitutes a "location indicated by instructions for delivery to the purchaser" under sec. 77.522(1)(b)2., Wis. Stats.

Example 2: Same facts as in Example (1) except Purchaser is a consumer who downloads the software from the internet and uses a credit card to pay for the software and the subscription to the updates. During the consummation of the sale, Seller receives no information regarding the location to which the software and the subscription will be delivered, but does receive Purchaser's credit card billing address. Seller sources the transaction to Purchaser's credit card billing address because it is a location indicated by an address for the purchaser obtained during the consummation of the sale under sec. 77.522(1)(b)4., Wis. Stats., and because Seller has no delivery or other address in its business records that would permit sourcing under either sec. 77.522(1)(b)2. or 3., Wis. Stats.

Example 3: Seller delivers to purchaser a copy of prewritten computer software. The license is for a 1-year period and requires Purchaser to make payments to renew the license. If Purchaser does not make an annual payment, Purchaser must terminate use of the software and the software may cease to function. Seller ships the software on a disk to Purchaser in State A. Seller sources the initial license payment to State A, the location to which it shipped the software, as determined under sec. 77.522(1)(b)2., Wis. Stats.

Example 4: Same facts as in Example (1), except Purchaser renews the software subscription for a second year. The purchase order for the renewal discloses a different "ship to" address than the purchase order for the initial

sale of the subscription. The different "ship to" location on the renewal purchase order constitutes the receipt by the Seller of information indicating that the location of the underlying software has changed. Seller sources the renewal to the new address.

Example 5: Same facts as in Example (4), except the purchase order for the renewal discloses a different "bill to" address than the purchase order for the initial sale of the subscription. The "ship to" address on the purchase order remains the same. A change in the "bill to" address on the purchase order does not constitute the receipt of information from Purchaser indicating that the location of the underlying software has changed. Seller sources the renewal payment to the same location as the initial payment.

Example 6: Same facts as in Example (2), except Purchaser has moved and has a new credit card billing address. Purchaser uses the credit card and the new address when renewing the software subscription for a second year. In the interim, Seller has received no information concerning the location of the software from Purchaser. Because the initial payment (a) was not sourced under sec. 77.522(1)(b)2., Wis. Stats., and (b) Purchaser has not provided information concerning the location of the software, Seller's use of the new credit card address for sourcing the renewal payment under sec. 77.522(1)(b)4., Wis. Stats., does not constitute bad faith.

Example 7: Same facts as in Example (3), except that after the software copy was delivered to Purchaser in State A, Purchaser installs the software on a computer located in State B. Seller never receives any information that the software is located in any state other than the one to which Seller originally shipped it. Purchaser renews the license at the end of the first year and Seller sources the renewal payment to State A. Because Seller has not received any information indicating that the location of the software has changed, Seller's sourcing of the license renewal payment to State A does not constitute bad faith.

Example 8: Seller sells to Purchaser prewritten computer software under a perpetual license for \$3 million. Seller agrees to finance the license fee over a 3-year period under which Purchaser will make three equal annual payments. Seller sends Purchaser an invoice that includes the first annual payment plus 100% of the sales tax due on the transaction. Seller thus collects and remits all of the tax due with respect to the transaction at the time of the sale. The subsequent payments are not made in connection with a software term license or subscription and no sourcing is necessary.

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b. **Bundled Transactions**

Certain transactions that involve the retail sale of 2 or more products, not including real property and services to real property, when the products are distinct and identifiable products and sold for one nonitemized price, may be a "bundled transaction" under sec.

77.51(1f), Wis. Stats. A transaction that is a "bundled transaction" and includes one or more products or services subject to tax, is subject to tax on the entire amount of the nonitemized price, unless the following applies:

At the retailer's option, if the retailer can identify, by reasonable and verifiable standards from the retailer's books and records that are kept in the ordinary course of its business for other purposes, including purposes unrelated to taxes, the portion of the price that is attributable to products that are not subject to tax, that portion of the sales price is not taxable. This does not apply to a bundled transaction that contains food and food ingredients, drugs, durable medical equipment, mobility-enhancing equipment, prosthetic devices, or medical supplies.

For purposes of bundled transactions:

- "Product" includes tangible personal property, items, property, and goods, and services.
- "Distinct and identifiable product" does not include any of the following:
 - a. Packaging, including containers, boxes, sacks, bags, bottles, and envelopes; and other materials, including wrapping, labels, tags, and instruction guides; that accompany, and are incidental or immaterial to, the retail sale of any product.
 - b. A product that is provided free of charge to the consumer in conjunction with the required purchase of another product, if the sales price of the other product does not vary depending on whether the product provided free of charge is included in the transaction.
 - c. Any items specified under sec. 77.51(12m)(a), Wis. Stats., or sec. 77.51(15b)(a), Wis. Stats.
- "One nonitemized price" does not include a price that is separately identified by product on a binding sales document, or other sales-related document, that is made available to the customer in paper or electronic form, including an invoice, a bill of sale, a receipt, a contract, a service agreement, a lease agreement, a periodic notice of rates and services, a rate card, or a price list.

"Bundled transactions" do not include any of the following:

- 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.
- 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.
- The retail sale of a service and items, property, or goods, if such items, property, or goods are 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.
- The retail sale of services, if one of the services is essential to the use or receipt of another service, and provided exclusively in connection with the other service, and if the true object of the transaction is the other service.
- A transaction that includes taxable and nontaxable products, if the seller's purchase price or the sales price of the taxable products is no greater than 10% of the seller's total purchase price or sales price of all the bundled products, as determined by the seller using either the seller's purchase price or sales price, but not a combination of both, or, in the case of a service contract, the full term of the service contract.
- The retail sale of taxable tangible personal property, or items, property, or goods, and exempt tangible personal property, or items, property, or goods, if the transaction includes food and food ingredients, drugs, durable medical equipment, mobility-

enhancing equipment, prosthetic devices, or medical supplies and if the seller's purchase price or the sales price of the taxable tangible personal property, or items, property, or goods is no greater than 50% of the seller's total purchase price or sales price of all the tangible personal property, or items, property, or goods included in what would otherwise be a bundled transaction, as determined by the seller using either the seller's purchase price or the sales price, but not a combination of both.

Section Tax 11.985, Wis. Adm. Code (November 2010 Register), provides additional information on "bundled transactions."

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c. Items, property, and goods under sec. 77.52(1)(b), (c), and (d), Stats.

Wisconsin sales and use taxes apply to:

- Items under sec. 77.52(1)(b), Stats., which are coins and stamps of the United States that are sold, licensed, leased, rented, or traded as collectors' items above face value.
- Property under sec. 77.52(1)(c), Stats., which is leased property that is affixed to real property if the lessor has the right to remove the leased property upon breach or termination of the lease agreement, unless the lessor of the leased property is also the lessor of the real property to which the leased property is affixed.
- Goods under sec. 77.52(1)(d), Stats., which are "specified digital goods" and "additional digital goods" sold, licensed, leased, or rented at retail, for the right to use the specified digital goods or additional digital goods on a permanent or less than permanent basis and regardless of whether the purchaser is required to make continued payments for such right.

Note: "Digital goods" are characterized by the fact that they are "transferred electronically" to the purchaser. "Transferred electronically" means accessed or obtained by the purchaser by means other than tangible storage media. **Computer software, whether prewritten or other than prewritten, is not a digital good, regardless of the fact that the computer software has been transferred electronically to the customer.**

Additional information on the taxation of digital goods is available in Publication 240:

[Digital Goods - How Do Wisconsin Sales and Use Taxes Apply to Sales and Purchases of Digital Goods?](#)

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2. What is "Prewritten computer software"?

"Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of 2 or more "prewritten computer software" programs or prewritten portions of computer software does not cause the combination to be other than "prewritten computer software." "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser if it is sold to a person other than the specific purchaser. If a person modifies or enhances computer software of which the person is not the author or creator, the person is the author or creator only of the person's modifications or enhancements. "Prewritten computer software" or a prewritten portion of computer software that is modified or enhanced to any degree, with regard to a modification or enhancement that is designed and developed to the specifications of a specific purchaser, remains

"prewritten computer software," except that if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement is not "prewritten computer software."

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3. **What computer hardware, software, and services are taxable?**

There are three major sales and use tax provisions that relate to the sales and use tax treatment of computer hardware, software and services:

- The sale of tangible personal property is subject to Wisconsin sales or use tax, unless an exemption applies. As of March 6, 2009, tangible personal property is defined to include prewritten computer software, regardless of how it is delivered to the purchaser. Therefore the sale, license, lease, or rental of computer hardware and prewritten computer software is subject to Wisconsin sales or use tax.
- The repair, service, alteration, fitting, cleaning, painting, coating, towing, maintenance, and inspection of tangible personal property is also subject to Wisconsin sales or use tax.
- The sale of contracts, including service contracts, maintenance agreements, computer software maintenance contracts for prewritten computer software, and warranties, that provide, in whole or in part, for the future performance of or payment for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Wis. Stats., are subject to Wisconsin sales or use tax unless the sale, license, lease, or rental in this state of the property, items, or goods to which the contract relates is or was exempt, to the purchaser of the contract, from taxation under this subchapter.

a. **Taxable Sales**

Charges to customers for the following services are subject to Wisconsin sales or use tax:

- Installation and setup of computer hardware
- Installation of hardware devices (including printers, hard drives, modems, monitors, etc.)
- Installation of prewritten computer software
- Configuration of prewritten computer software
- Online or on-site troubleshooting hardware problems
- Online or on-site troubleshooting of prewritten computer software
- Setting up hardware and prewritten computer software on network
- Inspecting, servicing, or repairing prewritten computer software via modem
- Installation of prewritten computer software
- Inspections of hardware and prewritten computer software
- Consulting and design services provided in connection with the sale of computer hardware and prewritten computer software
- Internet access services, when the sale of the service is sourced to Wisconsin as provided in sec. Tax 11.66(3)(c), Wis. Adm. Code (August 2014 Register).

Example 1: Company A charges a flat monthly fee to both "dial-up" customers (that is, customers that use local access and long-distance telephone companies to connect to Company A) and "dedicated-line" customers (that is, customers who have a direct line to Company A) for providing access to the internet. Customers have an unlimited number of usage hours and/or access. The monthly fee is for providing access to the internet which is a service subject to tax when sourced to Wisconsin as provided in sec. Tax 11.66(3)(c), Wis. Adm. Code (August 2014 Register).

Example 2: Assume the same facts as Example 1, except that Company A charges an hourly rate in addition to a flat monthly charge. For example, Company A charges a customer \$12.95 per month plus \$2 per hour for every hour of access or usage in excess of 8 hours. The monthly and hourly charges are for providing access to the internet which is a service that is subject to tax when sourced to Wisconsin as provided in sec. Tax 11.66(3)(c), Wis. Adm. Code (August 2014 Register).

- Installation or hook-up charges relating to internet access services when the internet access services are sourced to Wisconsin as provided in sec. Tax 11.66(3)(c), Wis. Adm. Code (August 2014 Register).

Example: Company B, an internet service provider, charges customers who subscribe for access services a one-time fee for installation and connection required for providing access to the internet. The installation charge is part of Company B's sales price for providing access to the internet and is subject to Wisconsin sales or use tax in the same manner as the access charges.

- Sales of textbooks and manuals, whether furnished to the purchaser as tangible personal property or as a digital good
- Photographic services

Example: Company C provides internet-related services to real estate professionals. One of its services involves taking photographs of homes that are for sale. The photographs include 360-degree pictures of rooms or fronts of properties that give a "virtual tour" of the customer's property. The photographs are electronically transferred by the photographer to the customer's website where the photographs can be viewed by potential purchasers of homes. The charge by Company C to the real estate professional for photographic services (taking the photographs and reproducing them on the internet) is subject to Wisconsin sales or use tax.

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b. **Nontaxable Sales**

Charges to customers for the following services are not subject to Wisconsin sales or use tax:

(Note: If any of the services below are a "service necessary to complete the sale" of taxable products or services, the charges for that service would be part of the "sales price" of the taxable property, item, good, or service and would also be subject to Wisconsin sales or use tax.)

- Writing computer software other than prewritten computer software
- Making modifications or enhancements to prewritten computer software that are designed and developed to the specifications of a specific purchaser, and the person making the modifications or enhancements provides a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement
- Installing computer software other than prewritten computer software
- Updating computer software other than prewritten computer software
- Training people on how to use software or hardware

Example 1: Company A sells prewritten computer software to Customer B for \$1,000. Company A also offers optional training on how to use the prewritten computer software for an additional \$100. Customer B chooses to purchase the training service. The \$1,000 sale of the prewritten computer software is subject to Wisconsin sales tax but the \$100 charge for the training is not subject to tax since the training was not required by the seller or the purchaser as a service necessary to complete the sale.

Example 2: Company C sells prewritten computer software to Customer D for \$1,000. In addition, Company C also requires that any customer that purchases the prewritten computer software, must also purchase the training services on how to use the software for \$100. Since Company C requires that Customer D purchase the training services, the training services are a service necessary to complete the sale and Company C must charge Wisconsin sales tax on the entire \$1,100 it charges Customer D.

- Writing queries of databases
- Designing screens, forms, reports, or menus
- Answering people's questions
- Reformatting data
- Data conversion
- Data recovery
- Making backups of data files
- Network assessment services that consist of network analysis and evaluation unrelated to a specific hardware or software problem and unrelated to the sale of computer hardware or computer software
- Hosting websites (that is, the storing of data on a computer) without selling any tangible personal property or any digital good is a nontaxable service. Only specific services are subject to the Wisconsin sales tax (such as photographic services, telecommunications services, and internet access). Likewise, domain name registration and site maintenance/update services are not subject to sales tax if no tangible personal property or digital good is transferred or taxable service performed.
- Designing websites and home pages. Website design is not among the services subject to Wisconsin sales tax if the service is not primarily a photographic service. Whether the completed website design is transferred to the customer electronically (i.e., accessed or obtained by the purchaser by means other than tangible storage media), or transferred using a tangible storage medium (e.g., a CD), the charge for the website design work is not subject to tax.

Example: Customers supply an advertising agency or similar design company with information that is transformed into a point-and-click interface that allows others to access the information from a home page or website and print out the information desired. Specifically, a client tells the designer the information it wishes to advertise. A computer is used to create the words and graphics. The design created on the computer is transmitted by the advertising agency or similar design company electronically via email to a server and can be accessed through the internet. The charge to the client is not subject to tax.

- Website database charges.

Example: Company B, an internet service provider, sets up Company C with a database that can be accessed by other internet users. Company B charges Company C a set-up charge and per-gigabyte storage charge. The charge also

covers the administrative costs relating to the domain name registration for the website. The charges by Company B to Company C for database set-up or storage are not subject to Wisconsin sales or use tax.

- Charges for providing advertising or listing space on a website.

Example 1: Company A is a start-up internet business that acts as a website. The function of this website is to provide a starting place in a local area for information and services. It functions like a newspaper, business directory, and local shopper. Company A will be selling listing and ad space for the website for profit. The charge by Company A for listing and ad space is not subject to Wisconsin sales or use tax.

Example 2: Company C has developed a real estate listing service that will provide both public organizations and private individuals with a means of advertising on the internet. The electronic listing service will utilize a "hyperlink" concept that will begin with a home page and allow the user to link to other sections of the listing service and other site locations on the internet. Company C generates revenue by charging sellers of real estate for listing properties with Company C. The charge by Company C for listing properties is not subject to Wisconsin sales or use tax.

- Access services that will be resold.

Example: Company A is an internet access provider located in Wisconsin. Company A provides internet access to Company B, an internet Services Provider (ISP). Company B provides this access to end users accessing the internet. The charge by Company A to Company B for access services is not subject to Wisconsin sales or use tax because the services are for resale. Company B should provide Company A with a properly completed sales and use tax exemption certificate claiming resale.

- Training on how to use the internet.

More information about computer software service can be found in sec. Tax 11.71, Wis. Adm. Code (August 2012 Register).

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4. **Does a company have to pay sales tax on software that it obtains over the internet?**

In order to establish the tax treatment of a software license for prewritten computer software, a determination must be made whether the transaction is a sale, license, lease, or rental of the software or a sale of a nontaxable data processing service.

A. *Software Sale, License, Lease, or Rental* - The sale, license, lease, or rental of prewritten computer software that is sourced to Wisconsin as determined in sec. 77.522, Wis. Stats., is subject to Wisconsin sales or use tax, unless an exemption applies. Even though the sale, license, lease, or rental of prewritten computer software is not sourced to Wisconsin as provided in sec. 77.522, Wis. Stats., the purchaser is still subject to Wisconsin use tax:

- As of the time when the software becomes physically located in Wisconsin, or
- If the software is physically located outside of Wisconsin, as of the time when the software is used by the purchaser or the purchaser's agent from a location in Wisconsin.

Note: If, instead of a sale, license, lease, or rental of tangible personal property the transaction is a data processing service, the transaction is not taxable. (See Part B. Data Processing Services, below, for tax treatment.)

Example: A software provider located in New York sells a license to use its software to a Wisconsin business which has locations in both New York and Wisconsin. The sale of the software license is properly sourced under sec. 77.522, Wis. Stats., to the purchaser's location in New York since that is the location where the purchaser downloaded the software. The software is not downloaded or physically transferred to the purchaser in Wisconsin.

After the software is downloaded to the purchaser's server in New York, purchaser's employees located in Wisconsin access the software through an internet/web connection. The software is not downloaded or physically transferred to a location in Wisconsin.

The purchaser is subject to Wisconsin use tax based on its purchase price of the software, when the Wisconsin employees first access the software from Wisconsin. The purchaser has "used" the software in Wisconsin, as provided in sec. 77.51(22), Wis. Stats.

Section 77.51(22), Wis. Stats., defines "use" to include the exercise of any right or power over tangible personal property. Section 77.51(22)(bm), Wis. Stats., provides that the exercise of any right or power over tangible personal property includes directing the distribution, dissemination, or disposal of the tangible personal property regardless of whether the purchaser physically possesses the property in Wisconsin. **Note:** The purchaser may claim any sales or use taxes properly owed and paid to New York as a credit against the Wisconsin use tax owed.

Example: A software provider is located in Wisconsin and the purchaser is an Iowa business with an office located in Wisconsin. The Iowa business is billed by the software provider for its purchase of the software license. Using the sourcing rules in sec. 77.522, Wis. Stats., the software provider properly sources the transaction to Iowa. However, the purchaser actually downloaded and installed the software onto one of its computers at its Wisconsin business location. The purchaser is liable for Wisconsin use tax on the purchase price paid for the license of the software. The purchaser may claim any Iowa sales or use tax properly owed and paid as a credit against the Wisconsin use tax owed.

- B. *Data Processing Services* - A company may provide services which permit persons at different locations to access the same prewritten computer software through remote access by telephone lines, microwave, or other means. This is sometimes referred to as "cloud computing" or "software as a service" (SaaS). Such services are not subject to Wisconsin sales or use tax when (1) the persons or the persons' employees who have access to the prewritten computer software are not located on the premises where the equipment/software is located and do not operate the equipment or control its operation, (2) prewritten computer software that is downloaded or physically transferred to the customer or the customer's computers is incidental to the data processing services (that is, used solely to allow access to the service provider's hardware and software), and (3) the service provider is not providing a taxable service (for example, a telecommunications message service) in the transaction.

Note: The vendor may load the prewritten computer software onto its server and maintain the software if there is a breakdown. Such loading and maintenance, by itself, does not demonstrate sufficient evidence of control over the software to conclude that the vendor is providing a data processing service. If a customer has control over

computer hardware and software it accesses from a remote location, has unlimited access to the server, loads its own software, is responsible for security measures regarding its use of the computer equipment (file server) and software, and decides how, when, and where its output will be provided through its own manipulation of the software, the vendor is leasing (licensing) tangible personal property (software) to its customer (see Part A, Software Lease, above, for tax treatment).

Example: Company A, an Application Service Provider (ASP), provides access to its software. The software is stored on Company A's servers and the customer accesses the software via the internet. Customers that contract with Company A have access to Company A's servers, but do not operate or have control over the servers. Company A has control over the computer hardware and software, loads the software onto the server, and is responsible for security measures regarding the computer equipment (file server) and software. Company A does not provide a taxable service (for example, a telecommunications message service) in the transaction. In order for Company A's customers to access the hardware and software, the customers must use a client utility program that they download from Company A. Company A is providing a data processing service, which is not subject to Wisconsin sales and use tax, regardless of whether the server is located in Wisconsin or outside Wisconsin. Data processing services are not among the services subject to Wisconsin sales and use tax.

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5. How does Wisconsin treat the following cloud computing components?

- A. **Software as a Service (SaaS)** - Service provider hosts software application over the internet.

Charges for accessing prewritten computer software located on the vendor's server, if the customer does not operate the vendor's server, or control its operation and does not have physical access to the vendor's server, are not taxable. This assumes the service provider is not providing a taxable service (for example, a telecommunications message service) in the transaction.

Note:

- Charges for prewritten computer software that is downloaded to the customer's equipment (or equipment that the customer has access to and control over) in Wisconsin are taxable.
- Charges for prewritten computer software that is downloaded to the customer's equipment (or equipment the customer has access to and control over) outside of Wisconsin, with the customer's subsequent use of the prewritten software occurring in Wisconsin, are taxable.

- B. **Infrastructure as a Service (IaaS)** - Service provider owns, maintains, operates and houses equipment (that is, hardware, servers, network components) used to support a customer's operations. Customer uses the internet to access the equipment.

Charges for storage on someone else's server that the customer doesn't have control over or physical access to are not taxable.

Note: Charges for the use of equipment (i.e., servers and other hardware) that the customer has control over and physical access to are taxable.

- C. **Platform as a Service (PaaS)** - Platform as a service contains elements of both IaaS and SaaS. The tax treatment depends on the factors mentioned above.

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Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of February 20, 2020: Sections 77.51, 77.52 and 77.522, Wis. Stats., and sec. Tax 11.71, Wis. Adm. Code.

Laws enacted and in effect after February 20, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to February 20, 2020, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

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