



DAVID STEFFEN

STATE REPRESENTATIVE • 4th ASSEMBLY DISTRICT

October 10, 2023

Testimony to the Assembly Committee on Ways and Means re: Assembly Bill 353

Chairman Macco and Committee Members:

Thank you for the opportunity to provide written testimony in support of Assembly Bill 353 relating to creating clarification that Multiple Listing Services (MLSs) are sales tax exempt. This is a simple, bipartisan bill aimed at removing any ambiguity regarding this tax exemption.

In 2021, the Department of Revenue updated its guidance related to the sales tax of digital goods to include access to online databases. This update has created confusion regarding which digital services are subject to the sales tax, including MLSs. AB 353 would clarify that MLSs are exempt from the sales tax because the **main** purpose of MLSs is to connect brokers (a nontaxable service), not to provide property information to the public (an incidental, taxable good).

Other states, including New York, New Jersey and Virginia exempt the MLS from sales tax. Additionally, to be clear, **the Wisconsin DOR is not currently charging sales tax for the MLS service and supports this statutory clarification to eliminate any confusion relating to the MLS sales tax exemption.** This is reflected in DOR's fiscal analysis, which explains that the financial impact of this bill is expected to be minimal, given that the tax is not currently being collected.

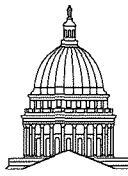
Assembly Bill 353 eliminates a gray area of the law for individuals who utilize MLSs within their profession by creating clarity in the existing, related statute.

Thank you again for the opportunity to speak in favor of this legislation. I welcome any questions you have regarding Assembly Bill 353 and ask that you will join me in supporting this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "D Steffen", is written over a horizontal line.

David Steffen
State Representative
4th Assembly District



JULIAN BRADLEY
WISCONSIN STATE SENATOR

Chair Macco and Committee Members:

Thank you for taking the time to hear testimony on Assembly Bill 353.

Assembly Bill 353 removes an ambiguous area of the law regarding whether Multiple Listing Services (MLSs) are exempt from sales tax. The primary purpose of MLSs is connecting brokers, so information can be easily transmitted, and homebuyers and sellers can more effectively navigate the process of purchasing a home.

This bill clarifies that brokers may not be charged a sales tax for MLSs because their main purpose is to connect brokers, which is a nontaxable good. While MLSs do provide property information, this is not their primary purpose and most of this information is already largely accessible to the public.

Other states already exempt MLSs from a sales tax such as New York, New Jersey, and Virginia. In addition, the Wisconsin Department of Revenue currently does not charge a sales tax for this service.

In short, Assembly Bill 353 clarifies existing statutes and removes an unnecessary burden. I appreciate your time and urge you to support this bipartisan legislation.



To: Assembly Committee on Ways and Means
From: Cori Lamont, Senior Director of Legal and Public Affairs
Date: October 10, 2023
RE: SB 351/AB 353: Sales Tax Application to Wisconsin Multiple Listing Services

The WRA supports SB 351/AB 353, creating statutory clarification as to a sales tax exemption for the sale of certain Multiple Listing Service (MLS) services.

Background

The Wisconsin Statutes define digital goods to include “newspapers or other information products.”¹ In 2021, The Wisconsin Department of Revenue (DOR) expanded the scope of “digital goods” guidance to include access to online databases. In November 2021, the DOR revised Publication 240 to clarify that “other news or information products” are not limited to products that disseminate news but also include any products that disseminate information, where information is a collection of facts or data (not necessarily news-related).² Examples in Publication 240 indicate that “newspapers or other information products” specifically includes access to an online database or website of current or historical information that allows the user to view and/or download the information, such as price or valuation information.

This revised guidance creates confusion because various products or services that directly or indirectly involve the transfer of electronic information could conceivably be construed as additional digital goods subject to the retail sales tax.

What is an MLS?

MLSs were created and continue to facilitate cooperation and compensation among participating real estate brokers.

- Since the late 1800s, REALTORS® have used MLSs and related technologies to facilitate real estate brokerage services and cooperation among brokers. The core of the MLS is facilitation of a private offer of cooperation and compensation by listing real estate brokers (*i.e.*, those representing the seller) to other real estate brokers.
- Most of the information contained in the MLS is available for free to the general public. For instance, the lot size, tax assessment, digital parcel mapping, and basic information about the property itself is available through community assessor sites as well as other sites such as <https://www.wihomes.com> and www.realtor.com and many others.

Brokers join MLSs and pay membership dues or fees primarily to extend an offer of cooperation and compensation to other MLS participants.

- Through MLSs, real estate brokers share information on properties they have listed and invite other brokers to cooperate in the sale of such properties in exchange for

¹ Wis. Stat. § 77.51(1a)(a)5.

² Publication 240, Digital Goods, Wisconsin Department of Revenue, November 1, 2021, at page 17.

compensation if the other broker produces the buyer.

- The dissemination of information regarding each property is merely an incidental component of the MLS listing process, the primary function of which is to facilitate the exchange of offers of cooperation and allow the sharing of commissions between brokers.

MLS Fees and Dues are Not Taxable

- **Digital goods incidental to a nontaxable service are not subject to the sales tax if the main purpose of the customer is to obtain the nontaxable service.** In general, a Wisconsin seller does not have to withhold and remit sales taxes upon sales of taxable goods or services if such sales are incidental to the performance of a nontaxable service and each customer's main purpose or objective is to obtain the service rather than to purchase tangible personal property.³ For purposes of this exception, tangible personal property or additional digital goods transferred by a service provider are "incidental" to a nontaxable service "if the purchaser's main purpose or objective is to obtain the service rather than the property. . . even though the property. . . may be necessary or essential to providing the service."⁴
- **MLSs are exempt from the sales tax because the main purpose of the MLS is to facilitate cooperation and compensation among participating real estate brokers.**
 - **Primary purpose** - facilitating private offers of cooperation and commissions by and between participating members of the MLS.
 - **Secondary purpose** - dissemination of information regarding each property incidental to the listing process.
- **Most property information is available to the public.** Again, the primary purpose of a Wisconsin MLS is to facilitate compensation and cooperation, a nontaxable service, not to provide access to an online database or website with price or other information about real estate that users can view or access. MLSs do not charge for or sell real property listing databases or other information and the information is free to the public.
- **Other states recognize MLS fees and dues are not subject to state and local sales taxes due to the primary purpose of facilitating cooperation and compensation among participating brokers.** New York⁵, New Jersey⁶, Virginia⁷ all determined that the MLS was not subject to the sales tax because the primary function of the MLS is to facilitate compensation and cooperation.
- **The state is not currently charging sales tax for the MLS service.** The DOR is not currently charging sales tax for the facilitation of the cooperation and compensation of the MLS and is supportive of the statutory clarification provided in the legislation.

We respectfully request your support for SB 351/AB 353.

³ Wis. Stat. § 77.52(2m).

⁴ Wis. Stat. § 77.51(5). Wis. Admin. Code Tax 11.67.

⁵ New York Advisory Opinion No. TSB-A-97(55)S, New York Department of Taxation and Finance, (September 3, 1997).

⁶ N.J. Admin. Code 18:24-35.5(b), Ex. 1.

⁷ Document No. 92-138, Ruling of the Tax Commissioner, Virginia Department of Taxation, (Aug. 10, 1992), available at: <https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/92-138>. Historically, real estate listings were documented in physical books.