# CHAPTER 77

## TAXATION OF FOREST CROPLANDS; REAL ESTATE TRANSFER FEES; SALES AND USE TAXES; COUNTY AND SPECIAL DISTRICT SALES AND USE TAXES; MANAGED FOREST LAND; ECONOMIC DEVELOPMENT SURCHARGE; LOCAL FOOD AND BEVERAGE TAX; LOCAL RENTAL CAR TAX; PREMIER RESORT AREA TAXES; STATE RENTAL VEHICLE FEE; DRY CLEANING FEES

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### SUBCHAPTER I

### TAXATION OF FOREST CROPLANDS

**Cross−reference:** See also ch. NR 46, Wis. adm. code.

**77.01 Purposes.** It is the intent of this subchapter to encourage a policy of protecting from destructive or premature cutting the forest growth in this state, and of reproducing and growing for the future adequate crops through sound forestry practices of for-

est products on lands not more useful for other purposes, so that such lands shall continue to furnish recurring forest crops for commercial use with public hunting and fishing as extra public benefits, all in a manner which shall not hamper the towns in which such lands lie from receiving their just tax revenue from such lands.

**History:** 1971 c. 215; 1985 a. 332 s. 251 (2).

**Cross−reference:** See also ch. NR 302.03, Wis. adm. code.

Requests by individual legislators and town or county boards for delay in issuing orders pursuant to ch. 77, present no basis for withholding actions by the department. 61 Atty. Gen. 134.

**77.015 Lands in villages included.** Sections 77.01 to 77.14 shall apply to villages for the same purposes as specified in s. 77.01 and where in such sections the words "town" or "towns" appear they shall be substituted, for the purposes of this section, by the words "village" or "villages," respectively.

**History:** 1981 c. 390.

**77.02 Forest croplands. (1)** PETITION. The owner of an entire quarter quarter section, fractional lot or government lot as determined by U.S. government survey plat, excluding public roads and railroad rights−of−way that may have been sold, may file with the department of natural resources a petition stating that the owner believes the lands therein described are more useful for growing timber and other forest crops than for any other purpose, that the owner intends to practice forestry thereon, that all persons holding encumbrances thereon have joined in the petition and requesting that such lands be approved as "Forest Croplands" under this subchapter. Whenever any such land is encumbered by a mortgage or other indenture securing any issue of bonds or notes, the trustee named in such mortgage or indenture or any amendment thereto may join in such petition, and such action shall for the purpose of this section be deemed the action of all holders of such bonds or notes. Land for which a petition is submitted under sub. (4) is exempt from the size requirements specified under this subsection.

**(2)** NOTICE OF HEARING, ADJOURNMENT. Upon receipt of such petition the department of natural resources shall investigate the same and shall file a listing of descriptions with the town chairperson. For petitions received prior to May 1, the department shall within the same calendar year cause a notice that such petition has been filed to be published as a class 3 notice, under ch. 985, in the newspaper having the largest general circulation in the county in which the lands are located, and notice by registered mail shall be given to the town clerk of any town in which the lands are located. Such notice shall contain the name of the petitioner, a description of the lands and a statement that any resident of or taxpayer in the town may within 15 days from the date of publication of the notice file a request with the department that it conduct a public hearing on the petition. Upon receipt of such a request the department shall conduct a public hearing on the petition. The department may conduct a public hearing on any petition without a request, if it deems it advisable to do so. Notice of the time and place of such hearing and a description, in specific or general terms, as the department deems advisable, of the property requested to be approved as "Forest Croplands" shall be given to persons making the request, the owner of such land and to the assessor of towns in which it is situated, by mail, at least one week before the day of hearing. The notice also shall be published as a class 1 notice, under ch. 985, in a newspaper having general circulation in the county in which such land is located, at least one week before the day of the hearing. Such hearing may be adjourned and no notice of the time and place of such adjourned hearing need be given, excepting the announcement thereof by the presiding officer at the hearing at which the adjournment is had.

**(3)** DECISION, COPIES. (a) After receiving all the evidence offered at any hearing held on the petition and after making such independent investigation as it sees fit the department shall make its findings of fact and make and enter an order accordingly. If it finds that the facts give reasonable assurance that a stand of merchantable timber will be developed on such descriptions within a reasonable time, and that such descriptions are then held permanently for the growing of timber under sound forestry practices, rather than for agricultural, mineral, shoreland development of navigable waters, recreational, residential or other purposes, and that all persons holding encumbrances against such descriptions have in writing agreed to the petition, the order entered shall grant the request of the petitioner on condition that all unpaid taxes against said descriptions be paid within 30 days thereafter; otherwise the department of natural resources shall deny the request of the petitioner.

(b) If the request of a petitioner is granted under par. (a) or sub. (4), a copy of such order shall be filed with the department of revenue, the supervisor of equalization and the clerk of each town, and the order shall be recorded with the register of deeds of each county, in which any of the lands affected by the order are located. The register of deeds shall record the entry, transfer or withdrawal of all forest croplands in a suitable manner on the county records. The register of deeds may collect recording fees under s. 59.43 (2) from the owner.

(c) Except as provided in sub. (4) (b), any order of the department relating to the entry of forest croplands issued on or before November 20 of any year shall take effect on January 1 of the following calendar year, but all orders issued after November 20 shall take effect on January 1 of the calendar year following the calendar year in which orders issued on or before November 20 would have been effective.

**(4)** EXEMPTION FOR CERTAIN SMALLER PARCELS. (a) A landowner of a parcel that is less than a quarter quarter section in size may petition the department of natural resources to allow the land to be entered as forest croplands under this section. The department shall grant the petition and issue an order entering the land as forest croplands if all of the following apply:

1. The landowner of the parcel is a nonprofit archery club.

2. The parcel of land was part of a quarter quarter section or lot that was entered as forest croplands before January 1, 1968.

3. The parcel of land was divided from the section or lot and was sold to the landowner before January 1, 2009.

(b) An order issued under par. (a) shall take effect on the date of its issuance. Notwithstanding the 25−year or 50−year requirement under s. 77.03, the date for the ending of a order entered under par. (a) shall be the same date as the date for the ending of the order that applies to the section or lot from which the parcel was divided.

(c) Subsections (2) and (3) (a) do not apply to a petition submitted under this subsection.

(d) The taxes and penalties under s. 77.10 do not apply to a parcel affected by an order of withdrawal if an order of entry is subsequently issued for the parcel under par. (a). If an order of withdrawal is issued for such a parcel after the issuance of the order for entry under par. (a), the landowner shall be liable for all withdrawal taxes and penalties under s. 77.10 that would have been levied on the parcel if the parcel had continuously been subject to the original order of entry issued for the entire quarter quarter section or lot.

**History:** 1971 c. 215; 1975 c. 45; 1977 c. 29 s. 1647 (2); 1977 c. 418; 1983 a. 275 s. 15 (3); 1985 a. 332 s. 251 (2); 1989 a. 56 s. 258; 1991 a. 316; 1993 a. 301; 1995 a. 201; 2009 a. 28.

In order to be eligible for entry under the forest crop law the lands must be continuous or contiguous and 40 or more acres in size. 58 Atty. Gen. 8.

**77.03 Taxation of forest croplands.** After the filing and recording of the order with the officers under s. 77.02 (3) the lands described therein shall be "Forest Croplands", on which taxes shall thereafter be payable only as provided under this subchapter. The enactment of ss. 77.01 to 77.14, petition by the owner and the making of the order under s. 77.02 (3) or (4) (a) shall constitute a contract between the state and the owner, running with the lands, for a period of 25 or 50 years at the election of the applicant at the time the petition is filed, unless withdrawn under s. 77.10, with privilege of renewal by mutual agreement between the owner and

the state, whereby the state as an inducement to owners and prospective purchasers of forest croplands to come under ss. 77.01 to 77.14 agrees that, unless withdrawn under s. 77.10, no change in or repeal of ss. 77.01 to 77.14 shall apply to any land then accepted as forest croplands, except as the department of natural resources and the owner may expressly agree in writing and except as provided in s. 77.17. If at the end of the contract period the land is not designated as managed forest land under subch. VI, the merchantable timber on the land shall be estimated by an estimator jointly agreed upon by the department of natural resources and the owner, and if the department and the owner fail to agree on an estimator, the judge of the circuit court of the district in which the lands lie shall appoint a qualified forester, whose estimate shall be final, and the cost thereof shall be borne jointly by the department of natural resources and the owner; and the 10 percent severance tax paid on the stumpage thereon in the same manner as if the stumpage had been cut. The owners by such contract consent that the public may hunt and fish on the lands, subject to such rules as the department of natural resources prescribes regulating hunting and fishing.

**History:** 1971 c. 215; 1979 c. 89; 1985 a. 29; 1989 a. 31; 1993 a. 301; 2009 a. 28.

This section creates a right of access across an owner's non−enrolled lands to reach the owner's landlocked enrolled lands for purposes of hunting and fishing. 71 Atty. Gen. 163.

**77.04 Taxation. (1)** TAX ROLL. The clerk on making up the tax roll shall enter as to each forest cropland description in a special column or some other appropriate place in such tax roll headed by the words "Forest Croplands" or the initials "F.C.L.", which shall be a sufficient designation that such description is subject to this subchapter. Such land shall thereafter be assessed and be subject to review under ch. 70, and such assessment may be used by the department of revenue in the determination of the tax upon withdrawal of such lands as forest croplands as provided in s. 77.10 for entries prior to 1972 or for any entry under s. 77.02 (4) (a). The tax upon withdrawal of descriptions entered as forest croplands after December 31, 1971, may be determined by the department of revenue by multiplying the last assessed value of the land prior to the time of the entry by an annual ratio computed for the state under sub. (2) to establish the annual assessed value of the description. No tax shall be levied on forest croplands except the specific annual taxes as provided, except that any building located on forest cropland shall be assessed as personal property, subject to all laws and regulations for the assessment and taxation of general property.

**(2)** TAX PER ACRE; PAYMENT; PENALTY. The "acreage share" shall be computed at the rate of 10 cents per acre on all lands entered prior to 1972 or entered under s. 77.02 (4) (a). On all lands entered after December 31, 1971, the "acreage share" shall be computed every 10 years to the nearest cent by the department of revenue at the rate of 20 cents per acre multiplied by a ratio using the equalized value of the combined residential, commercial, manufacturing, agricultural, undeveloped, agricultural forest, and productive forest land classes under s. 70.32 (2) within the state in 1972 as the denominator, and using equalized value for these combined land classes in 1982 and every 10th year thereafter as the numerator. All owners shall pay to the taxation district treasurer the acreage share on each description on or before January 31. If the acreage share is not paid when due to the taxation district treasurer it shall be subject to interest and penalty as provided under ss. 74.11 (11), 74.12 (10) and 74.47. These lands shall be returned as delinquent and a tax certificate under subch. VII of ch. 74 shall be issued on them. After 2 years from the date of the issuance of a tax certificate, the county clerk shall promptly take a tax deed under ch. 75. On taking such deed the county clerk shall certify that fact and specify the descriptions to the department of natural resources.

**(3)** APPORTIONMENT OF FOREST CROPLAND INCOME. Out of all moneys received by any town from any source on account of forest croplands in such town, the town treasurer shall on or before November 15 pay 20 percent to the county treasurer and retain the remainder.

**History:** 1971 c. 215; 1975 c. 39, 211; 1977 c. 418; 1981 c. 20, 167, 391; 1983 a. 275 s. 15 (8); 1983 a. 405, 538; 1985 a. 332 s. 251 (2); 1987 a. 378; 2003 a. 33; 2009 a. 28.

**77.05 State contribution.** The department of natural resources shall pay before June 30 annually to the town treasurer, from the appropriation under s. 20.370 (5) (bv), 20 cents for each acre of land in the town that is described as forest croplands under this subchapter.

**History:** 1971 c. 215; 1975 c. 39 s. 734; 1977 c. 29 s. 1656 (38); 1977 c. 418; 1979 c. 34 s. 2102 (39) (a); 1991 a. 39; 1995 a. 27.

**77.06 Forestation. (1)** CUTTING TIMBER REGULATED. (a) No person shall cut any merchantable wood products on any forest croplands where the forest crop taxes are delinquent nor until 30 days after the owner has filed with the department of natural resources a notice of intention to cut, specifying by descriptions and the estimated amount of wood products to be removed and the proportion of present volume to be left as growing stock in the area to be cut. Merchantable wood products include all wood products except wood used for fuel by the owner.

(b) 1. The department of natural resources, after examination of the lands specified in the notice of intention to cut, may prescribe the amount of forest products to be removed, except as provided under subd. 2.

2. The department of natural resources may not prescribe the amount of forest products to be cut if the notice of intention to cut was provided to the department by any of the following:

a. A cooperating forester authorized under s. 28.05 to assist the state in the harvesting and sale of timber.

b. A forester accredited by the Society of American Foresters, Association of Consulting Foresters, or Wisconsin Consulting Foresters.

c. A person who holds at least a bachelor's degree from a forestry program provided by a nationally or regionally accredited institution of higher education and who has 5 years of experience engaged in the full−time profession of managing forests, including timber harvesting, wildlife management, water quality, and recreation to maintain a healthy and productive forest.

d. A person who holds a degree or diploma from a 2−year forestry program provided by an accredited technical or vocational school and who has 5 years of experience engaged in the full−time profession of managing forests, including timber harvesting, wildlife management, water quality, and recreation to maintain a healthy and productive forest.

e. A person who has 5 years of experience engaged in the full−time profession of managing forests, including timber harvesting, wildlife management, water quality, and recreation to maintain a healthy and productive forest.

(c) Cutting in excess of the amount prescribed by the department of natural resources, or cutting that the department finds is inconsistent with sound forestry practices, shall render the owner liable to a forfeiture equal to 20 percent of the value of the timber cut and subject to cancellation under s. 77.10.

**(2)** APPRAISAL OF TIMBER, ZONES. Each year the department of natural resources, at the time and place it shall fix and after such public notice as it deems reasonable, shall hold a public hearing. After the hearing the department shall make and file, open to public inspection, a determination of the reasonable stumpage values of the wood products usually grown in the several towns in which any forest croplands lie. A public hearing under this section shall be held prior to August 1 of each year and the determination of stumpage values made by the department of natural resources shall take effect on November 1 of that year. If the department of natural resources finds there is a material variance in the stumpage values in the different localities, it may fix separate zones and determine the values for each zone.

**(3)** REVALUATION. As to any locality or zone in which the department of natural resources deems there has been no material variance from the preceding year in stumpage values, it may omit to make any new valuation in any year, in which event the last preceding valuation shall continue in force until changed in a succeeding year.

**(4)** CUTTING REPORTED. Within 30 days after completion of cutting on any land description, but not more than one year after filing of the notice of intention to cut, the owner shall transmit to the department of natural resources on forms provided by the department a written statement of the products so cut, specifying the variety of wood, kind of product, and quantity of each variety and kind as shown by the scale or measurement thereof made on the ground as cut, skidded, loaded, delivered, or by tree scale certified by a qualified forester when stumpage is sold by tree measurement. The department of natural resources may accept such reports as sufficient evidence of the facts, or may either with or without hearing and notice of time and place thereof to such owner, investigate and determine the fact of the quantity of each variety and kind of product so cut during said periods preceding such reports.

**History:** 1971 c. 215; 1977 c. 29, 224; 2009 a. 365; 2015 a. 55, 358.

**77.08 Supplemental severance tax.** At any time within one year after any cutting should have been reported, the department of natural resources after due notice to the owner and opportunity to be heard, and on evidence duly made a matter of record, may determine whether the quantity of wood products cut from any such land, did in fact substantially exceed the amount on which the severance tax theretofore levied was based, and if so shall assess a supplemental severance tax which, in all respects, shall have the same force and effect as the former severance tax, except only it shall not be a lien on any property the title of which has passed to a purchaser for value without notice.

**77.09 False reports, penalties. (1)** Any person who fails to report or shall intentionally make any false statement or report to the department of natural resources required by s. 77.06 shall forfeit not more than $1,000. An action under this section shall not be a bar to a cancellation of entry and order of withdrawal under s. 77.10.

**(2)** The procedure in ss. 23.50 to 23.85 applies to actions brought under sub. (1).

**History:** 1989 a. 79.

**77.10 Withdrawal of forest croplands. (1)** INVESTIGATIONS, CANCELLATIONS, CONVEYANCES. (a) The department of natural resources shall on the application of the department of revenue or the owner of any forest croplands or the town board of the town in which said lands lie and may on its own motion at any time cause an investigation to be made and hearing to be had as to whether any forest croplands shall continue under this subchapter. If on such hearing after due notice to and opportunity to be heard by the department of revenue, the town and the owner, the department of natural resources finds that any such lands are not meeting the requirements set forth in s. 77.02 or that the owner has made use of the land for anything other than forestry or has failed to practice sound forestry on the land, the department of natural resources shall cancel the entry of such description and issue an order of withdrawal, and the owner shall be liable for the tax and penalty under sub. (2). Copies of the order of withdrawal specifying the description shall be filed by the department of natural resources with all officers designated to receive copies of the order of entry and withdrawal and this subchapter shall not thereafter apply to the lands withdrawn. If the owner shall not repay the amounts on or before the last day of February next succeeding the return of such lands to the general property tax roll as provided in sub. (4), the department of natural resources shall certify to the county treasurer the descriptions and the amounts due, and the county treasurer shall sell such lands as delinquent as described in s. 77.04 (2). Whenever any county clerk has certified to the taking of tax deed under s. 77.04 (2) the department of natural resources shall issue an order of withdrawal as to the lands covered in such tax deed. Such order may also be issued when examination of tax records reveals prolonged delinquency and noncompliance with the requirements of s. 77.04 (2).

(b) Whenever any owner of forest croplands conveys such land the owner shall, within 10 days of the date of the deed, file with the department of natural resources on forms prepared by the department a transfer of ownership signed by the owner and an acceptance of transfer signed by the grantee certifying that the grantee intends to continue the practice of forestry on such land. The department of natural resources shall immediately issue a notice of transfer to all officers designated to receive copies of orders of entry and withdrawal. Whenever a purchaser of forest croplands declines to certify his or her intention to continue the practice of forestry thereon, such action shall constitute cause for cancellation of entry under par. (a) without hearing.

**(2)** ELECTION TO WITHDRAW LANDS. (a) 1. Any owner of forest croplands may elect to withdraw all or any of such lands from under this subchapter, by filing with the department of natural resources a declaration withdrawing from this subchapter any description owned by such person which he or she specified, and by payment by such owner to the department of natural resources within 60 days the amount of tax due from the date of entry or the most recent date of renewal, whichever is later, as determined by the department of revenue under s. 77.04 (1) with simple interest thereon at 12 percent per year, less any severance tax and supplemental severance tax or acreage share paid thereon, with interest computed according to the rule of partial payments at the rate of 12 percent per year.

2. The amount of the tax shall be determined by the department of revenue and furnished to the department of natural resources, which shall determine the exact amount of payment. When the tax rate or assessed value ratio of the current year has not been determined the rate of the preceding tax year may be used. On receiving such payment the department of natural resources shall issue an order of withdrawal and file copies thereof with the department of revenue, the supervisor of equalization and the clerk of the town, and shall record the order with the register of deeds of the county, in which the land lies. The land shall then cease to be forest croplands.

(b) Upon receipt of any taxes under this section by the state, the department of natural resources shall first deduct all moneys paid by the state on account of the lands under s. 77.05 with interest on the moneys computed according to the rule of partial payments at the rate of interest paid under par. (a) by the person withdrawing such lands. The department shall within 20 days remit the balance to the town treasurer who shall pay 20 percent to the county treasurer and retain the remainder.

(c) Land subject to a contract under s. 77.03 that is withdrawn and the ownership of which is transferred to the federal government, the state or a local governmental unit, as defined in s. 66.0131 (1) (a), is not subject to the tax payment calculated under par. (a) if the land will be used for a public road, railroad, utility right−of−way, park, recreational trail, wildlife or fish habitat area or a public forest.

**(4)** TAXATION AFTER WITHDRAWAL. When any description ceases to be a part of the forest croplands, by virtue of any order of withdrawal issued by the department of natural resources, taxes thereafter levied thereon shall be payable and collectible as if such description had never been under this subchapter.

**History:** 1971 c. 215; 1975 c. 39 s. 734; 1977 c. 29, 201, 447; 1979 c. 110 s. 60 (13); 1983 a. 275 s. 15 (3); 1985 a. 332 s. 251 (2); 1987 a. 399; 1989 a. 79; 1991 a. 39, 316; 1993 a. 301; 1999 a. 150 s. 672; 2015 a. 358.

**77.105 Ferrous mining. (1)** The department may not issue an order of withdrawal under s. 77.10 (1) based on the cutting of timber or other forest crops or other activities on forest cropland if all of the following requirements are met:

(a) The cutting or activity is necessary to engage in bulk sampling, as defined in s. 295.41 (7).

(b) The area that will be affected by the cutting or the activity does not exceed 5 acres.

(c) A bulk sampling plan has been filed with the department under s. 295.45 and all approvals that are required for bulk sampling have been issued by the department.

(d) The revegetation plan that is part of the bulk sampling plan described under par. (c) includes forestry practices that will ensure that the timber, forest crops, and other vegetation that will be cut or otherwise affected will be restored to the greatest extent possible.

**(2)** The requirement under sub. (1) (d) does not apply to forest cropland that is within a mining site described in a preapplication notification under s. 295.465 or in an application for a ferrous mining permit under s. 295.58.

**History:** 2013 a. 1.

**77.11 Accounts of department of natural resources.** The department of natural resources shall keep a set of forest croplands books in which shall always appear as to each description in each town containing any forest croplands, the amount of taxes paid by the state to the town and received by the state from the owner. All tax payments shall be paid out of and receipts credited to the forestry account of the conservation fund.

**History:** 1977 c. 29.

**77.12 Review of findings, venue.** Any finding of fact made under this subchapter after due notice and hearing is final unless it is set aside or modified by the circuit court for either Dane County or the county in which the land lies. Any person may bring an action for that purpose in either of those courts within 30 days after the making of the finding sought to be reviewed.

**History:** 1985 a. 332 s. 251 (2); 1997 a. 253.

**77.125 Signatures. (1)** The signature of an official or an employee of the department of natural resources may be stamped, printed, or otherwise reproduced on an order under ss. 77.01 to 77.14 after the official or employee adopts the stamped, printed, or otherwise reproduced signature as his or her facsimile signature.

**(2)** The signature or the facsimile signature under sub. (1) of an official or an employee of the department of natural resources meets the requirement under s. 706.05 (2) (a).

**(3)** The requirement of s. 706.05 (2) (b) does not apply to orders issued under this subchapter.

**History:** 2009 a. 365.

**77.13 Termination of forest croplands program. (1)** On and after July 20, 1985, no person may petition the department of natural resources requesting it to approve any land as forest croplands under this subchapter.

**(2)** On and after January 1, 1986, the department of natural resources may not act on any petition requesting the designation of land as forest croplands, issue any order entering land as forest croplands or enter into a renewal of any forest croplands contract under this subchapter.

**(3)** Subsections (1) and (2) do not apply to any petition submitted under s. 77.02 (4).

**History:** 1985 a. 29; 1987 a. 27; 2009 a. 28.

**77.14 Forest croplands information, protection, appropriation.** The department of natural resources shall publish and distribute information regarding the method of taxation of forest croplands under this subchapter, and may employ a fire warden in charge of fire prevention in forest croplands. All actual and necessary expenses incurred by the department of natural resources or by the department of revenue in the performance of their duties under this subchapter shall be paid from the appropriation made in s. 20.370 (1) (mv) upon certification by the department incurring such expenses.

**History:** 1975 c. 39 s. 734; 1977 c. 29 s. 1656 (38); 1979 c. 32; 1979 c. 34 s. 2102 (39) (a); 1985 a. 332 s. 251 (2); 2003 a. 33.

**77.17 Contracts for land in the lower Wisconsin state riverway.** An owner of timber that is exempt under s. 30.44 (3) (c) 1. shall comply with a rule regulating timber cutting and harvesting promulgated under s. 30.42 (1) (d):

**(1)** If the rule is not inconsistent with the contract entered into under s. 77.03; or

**(2)** If the owner agrees to modify the contract entered into under s. 77.03 to require compliance with the rules.

**History:** 1989 a. 31; 2013 a. 54.

## SUBCHAPTER II

## REAL ESTATE TRANSFER FEE

**77.21 Definitions.** In this subchapter:

**(1)** "Conveyance" includes deeds and other instruments for the passage of ownership interests in real estate, including contracts and assignments of a vendee's interest therein, including instruments that are evidence of a sale of time−share property, as defined in s. 707.02 (32), and including leases for at least 99 years but excluding leases for less than 99 years, easements and wills.

**(1e)** "Mergers of entities" means the merger or combination of 2 or more corporations, nonstock corporations, limited liability companies, limited partnerships, or other entities, or any combination thereof, under a plan of merger or a plan of consolidation permitted by the laws that govern the entities.

**(1k)** "Partition" means the division among several persons of real property, including noncontiguous real property, that belongs to them as co−owners.

**(1m)** "Real estate" includes, but is not limited to, fixtures; roots, vines and trees of perennial crops; stock in a cooperative building; improvements on leased land; timber; and minerals.

**(2)** "Register" means the register of deeds for the county in which particular real estate is located.

**(3)** "Value" means:

(a) In the case of any conveyance not a gift, the amount of the full actual consideration paid therefor or to be paid, including the amount of any lien or liens thereon; and

(b) In case of a gift, or any deed of nominal consideration or any exchange of properties, the estimated price the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and at prevailing general price levels.

**History:** 1971 c. 150; 1989 a. 31; 1991 a. 39; 1993 a. 112; 1999 a. 9; 2001 a. 44; 2015 a. 295.

**Cross−reference:** See also ch. Tax 15, Wis. adm. code.

A memorandum announcing a reorganization of a land−owning partnership into a limited liability company and that the LLC was now the owner of the real estate was a document intended to transfer title to real estate. The receipt by members of ownership interests in the LLC was for value so that there was a conveyance under sub. (1) subject to taxation under s. 77.22. Wolter v. DOR, 231 Wis. 2d 651, 605 N.W.2d 283 (Ct. App. 1999), 99−0671.

**77.22 Imposition of real estate transfer fee. (1)** There is imposed on the grantor of real estate a real estate transfer fee at the rate of 30 cents for each $100 of value or fraction thereof on every conveyance not exempted or excluded under this subchapter. In regard to land contracts the value is the total principal amount that the buyer agrees to pay the seller for the real estate. This fee shall be collected by the register at the time the instrument of conveyance is submitted for recording. Except as provided in s. 77.255, at the time of submission the grantee or his or her duly authorized agent or other person acquiring an ownership interest under the instrument, or the clerk of court or judgment creditor in the case of a foreclosure under s. 846.16, shall execute a return, signed by

both grantor and grantee, on the form prescribed under sub. (2). The register shall enter the fee paid on the face of the deed or other instrument of conveyance before recording, and, except as provided in s. 77.255, submission of a completed real estate transfer return and collection by the register of the fee shall be prerequisites to acceptance of the conveyance for recording. The register shall have no duty to determine either the correct value of the real estate transferred or the validity of any exemption or exclusion claimed. If the transfer is not subject to a fee as provided in this subchapter, the reason for exemption shall be stated on the face of the conveyance to be recorded by reference to the proper subsection under s. 77.25.

**(2)** The secretary of revenue shall prescribe the form required under sub. (1). Forms filed on or after July 1, 2009, shall be filed electronically in the manner prescribed by the secretary. The secretary may waive the requirement to file electronically if the secretary determines, based on a written application for a waiver, that the requirement causes an undue hardship. The form shall include an application for a credit under s. 79.10 (5) and shall provide for the submission of the following:

(a) The value of the ownership interest transferred by the instrument of conveyance.

(b) The amount of the fee payable under this section.

(c) Whether the real estate transferred is subject to certification under s. 101.122 (4) (a), waiver under s. 101.122 (4) (b) or stipulation under s. 101.122 (4) (c).

(d) If the real estate transferred is not subject to certification under s. 101.122 (4) (a), waiver under s. 101.122 (4) (b) or stipulation under s. 101.122 (4) (c), the reason why it is not so subject or the form prescribed by the department of safety and professional services under s. 101.122 (6).

(e) The financing terms under which agricultural land is transferred that are relevant to determining only the value of the property.

(f) Any other information the secretary requires.

**History:** 1971 c. 150; 1977 c. 29; 1981 c. 20; 1985 a. 54; 1985 a. 174 ss. 1, 2, 7; 1985 a. 332; 1987 a. 27; 1989 a. 31; 1991 a. 269; 1993 a. 307; 1995 a. 27 ss. 3475m to 3476, 9116 (5); 2007 a. 219; 2011 a. 32; 2015 a. 60.

The transfer by all owners of property held as a in tenancy in common to a partnership consisting of all the original tenants in common was a taxable conveyance. DOR v. Mark, 168 Wis. 2d 288, 483 N.W.2d 302 (Ct. App. 1992).

A memorandum announcing a reorganization of a land−owning partnership into a limited liability company and that the LLC was now the owner of the real estate was a document intended to transfer title to real estate. The receipt by members of ownership interests in the LLC was for value so that there was a conveyance under s. 77.21 (1) subject to taxation under sub. (1). Wolter v. DOR, 231 Wis. 2d 651, 605 N.W.2d 283 (Ct. App. 1999), 99−0671.

There need not be both a conveyance and consideration with value for a transfer to be subject to the transfer fee. F.M. Management Co. v. Department of Revenue, 2004 WI App 19, 269 Wis. 2d 526, 674 N.W.2d 922, 03−1536.

**77.23 Disposition of fees and returns.** On or before the 15th day of each month the register shall submit to the county treasurer transfer fees collected together with the returns filed in the office during the preceding month for the treasurer's transmission to the department of revenue under s. 77.24 and shall submit to the county treasurer, or to the city treasurer if the property is located in a city that collects taxes under s. 74.87, all applications for credits under s. 79.10 (5) that the county register of deeds receives during the preceding month.

**History:** 1975 c. 338, 421; 1979 c. 153; 1985 a. 174; 1993 a. 301, 412; 1995 a. 27.

**77.24 Division of fee.** Twenty percent of all fees collected under this subchapter shall be retained by the county and the balance shall be transmitted to the state. Remittances shall be made monthly by the county treasurers to the department of revenue by the 15th day of the month following the close of the month in which the fee was collected. The remittance to the department shall be accompanied by the returns executed under s. 77.22.

**History:** 1977 c. 29; 1981 c. 20.

**77.25 Exemptions from fee.** The fees imposed by this subchapter do not apply to a conveyance:

**(1)** Prior to October 1, 1969.

**(2)** From the United States or from this state or from any instrumentality, agency or subdivision of either.

**(2g)** By gift, to the United States or to this state or to any instrumentality, agency or subdivision of either.

**(2r)** Under s. 236.29 (1) or (2) or 236.34 (1m) (e) or for the purpose of a road, street, or highway, to the United States or to this state or to any instrumentality, agency, or subdivision of either.

**(3)** Which, executed for nominal, inadequate or no consideration, confirms, corrects or reforms a conveyance previously recorded.

**(4)** On sale for delinquent taxes or assessments.

**(5)** On partition.

**(6)** Pursuant to mergers of entities.

**(6d)** Pursuant to partnerships filing or cancelling a statement of qualification under s. 178.0901 or a corresponding statement under the law of another jurisdiction.

**(6m)** Pursuant to the conversion of a business entity to another form of business entity under s. 178.1141, 179.76, 180.1161, 181.1161, or 183.1207, if, after the conversion, the ownership interests in the new entity are identical with the ownership interests in the original entity immediately preceding the conversion.

**(6q)** Pursuant to an interest exchange under s. 178.1131.

**(6t)** Pursuant to a domestication under s. 178.1151.

**(7)** By a subsidiary corporation to its parent for no consideration, nominal consideration or in sole consideration of cancellation, surrender or transfer of capital stock between parent and subsidiary corporation.

**(8)** Between parent and child, stepparent and stepchild, parent and son−in−law or parent and daughter−in−law for nominal or no consideration.

**(8m)** Between husband and wife.

**(8n)** Between an individual and his or her domestic partner under ch. 770.

**(9)** Between agent and principal or from a trustee to a beneficiary without actual consideration.

**(10)** Solely in order to provide or release security for a debt or obligation.

**(10m)** Solely to designate a TOD beneficiary under s. 705.15.

**(11)** By will, descent or survivorship.

**(11m)** By nonprobate transfer on death under s. 705.15.

**(12)** Pursuant to or in lieu of condemnation.

**(13)** Of real estate having a value of $1,000 or less.

**(14)** Under a foreclosure or a deed in lieu of a foreclosure to a person holding a mortgage or to a seller under a land contract.

**(15)** Between a corporation and its shareholders if all of the stock is owned by persons who are related to each other as spouses, as lineal ascendants, lineal descendants or siblings, whether by blood or by adoption, or as spouses of siblings, if the transfer is for no consideration except the assumption of debt or stock of the corporation and if the corporation owned the property for at least 3 years.

**(15m)** Between a partnership and one or more of its partners if all of the partners are related to each other as spouses, as lineal ascendants, lineal descendants or siblings, whether by blood or by adoption, or as spouses of siblings and if the transfer is for no consideration other than the assumption of debt or an interest in the partnership.

**(15s)** Between a limited liability company and one or more of its members if all of the members are related to each other as spouses, as lineal ascendants, lineal descendants or siblings, whether by blood or by adoption, or as spouses of siblings and if the transfer is for no consideration other than the assumption of debt or an interest in the limited liability company.

**(16)** To a trust if a transfer from the grantor to the beneficiary of the trust would be exempt under this section.

**(17)** Of a deed executed in fulfillment of a land contract if the proper fee was paid when the land contract or an instrument evidencing the land contract was recorded.

**(18)** To a local exposition district under subch. II of ch. 229.

**(20)** Made under s. 184.15.

**(21)** Of transmission facilities or land rights to the transmission company, as defined in s. 196.485 (1) (ge), under s. 196.485 (5) (b) or (c) or (6) (a) 1. in exchange for securities, as defined in s. 196.485 (1) (fe).

**History:** 1971 c. 150; 1985 a. 39; 1987 a. 27; 1991 a. 39, 202, 269; 1993 a. 112, 263, 307; 1995 a. 458; 1997 a. 140; 1999 a. 9, 162; 2001 a. 44; 2005 a. 206; 2009 a. 28; 2013 a. 66, 272; 2015 a. 295.

Corporate stock constitutes "actual consideration" under sub. (9). Gottfried, Inc. v. DOR, 145 Wis. 2d 715, 429 N.W.2d 508 (Ct. App. 1988).

A principal/agent relationship for purposes of sub. (9) must be examined as of the date of the conveyance. Washington National Development Co. v. DOR, 194 Wis. 2d 567, 535 N.W.2d 71 (Ct. App. 1995).

Exemptions are strictly construed against granting the exemption. While subs. (15m) and (15s) exempt transfers between family members and family business entities, they do not exempt transfers from one family business to another even though the same transaction, had it been completed in 2 separate transfers, would have been exempt. Wolter v. DOR, 231 Wis. 2d 651, 605 N.W.2d 283 (Ct. App. 1999), 99−0671.

Sub. (15s) applies only if the members of the limited liability company are human. The requirement that all of the members of the LLC be related to each other was reasonably interpreted to reject the argument that if there is only one member, that member need not be human because neither humans nor entities may be related to themselves. F.M. Management Co. v. Department of Revenue, 2004 WI App 19, 269 Wis. 2d 526, 674 N.W.2d 922, 03−1536.

There is no family member exemption under sub. (15m) when the transfer is between partnerships rather than from a partnership to exempted family members. For the exemption to apply, the partner or partners who are involved in the conveyance must be human beings, not just legal entities. Turner v. DOR, 2004 WI App 82, 271 Wis. 2d 760, 679 N.W.2d 880, 03−1517.

**77.255 Exemptions from return.** No return is required with respect to a conveyance exempt under s. 77.25 (1), (10m)[,].

**NOTE: This section is shown as affected by 2015 Wis. Acts 145 and 216 and as merged by the legislative reference bureau under s. 13.92 (2) (i). The comma in brackets was rendered unnecessary by the treatment by Act 145. Corrective legislation to remove the bracketed comma and replace the comma following "s. 77.25 (1)" with "or" is pending.**

**History:** 1983 a. 27; 1987 a. 27; 1991 a. 39; 2015 a. 145, 216; s. 13.92 (2) (i).

**77.256 Local fees prohibited. (1)** No city, village, town, or county may impose a fee on a conveyance that is exempt from the real estate transfer fee under s. 77.25.

**(2)** If a city, village, town, or county has an ordinance in effect on February 6, 2016, that is inconsistent with the prohibition under sub. (1), the city, village, town, or county may not enforce the ordinance.

**History:** 2015 a. 145.

**77.26 Powers of investigation, additional fees, refunds, penalties. (1)** The department of revenue may examine any records of any party to a conveyance to determine the real estate transfer fee due and the accuracy of the return submitted.

**(2)** If the department of revenue determines that the amount of the real estate transfer fee reported was in error or that an exemption was improperly claimed, the department shall compute the additional transfer fee to be paid by, or the amount of the overpayment of transfer fee to be refunded to, the grantor.

**(3)** All additional assessments and claims for refund are subject to the applicable notice provisions and procedures for review, final determination, collection, interest and penalties provided for additional income or franchise tax assessments and claims for refund under ch. 71.

**(4)** The department of revenue shall collect additional real estate transfer fees and divide the amount collected with the appropriate county in the proportion under s. 77.24.

**(5)** In the case of overpayment of transfer fees by any grantor under sub. (2), the department of revenue shall certify the overpayment to the department of administration for payment of the refund to the grantor.

**(6)** The department of revenue shall notify the appropriate county treasurer of any refund paid by the state, and the appropriate county treasurer shall increase the county's next payment to the state to reimburse the state for the county's share of the refund.

**(7)** No person may make additional assessments of transfer fees or claim a refund of excess transfer fees paid after 4 years have elapsed from the date the transfer fee was due under s. 77.22.

**(8)** If the department of revenue determines that the value reported on the return under s. 77.22 is understated by 25 percent or more or that an exemption was improperly claimed under s. 77.25, the department shall assess and collect a penalty of $25 or 25 percent of the additional fee due, whichever is greater, in the manner that additional transfer fees are collected.

**History:** 1983 a. 27; 1991 a. 39.

**77.265 Confidentiality.** Grantor and grantee social security numbers and grantor and grantee telephone numbers from real estate transfer returns shall be confidential, but the returns, and the information contained in the returns, may be disclosed as follows:

**(1)** The department of revenue shall distribute information from the returns to local assessors. The local assessors shall maintain the confidentiality of social security numbers and telephone numbers from the returns.

**(2)** The local assessor shall permit the inspection of all returns filed under this subchapter for property within any local unit of government for which property taxes are levied by the chief elected official, or a person designated by the official, of that unit upon the adoption of a resolution by the governing body of the unit directing the official to inspect the returns for the purpose of reviewing the basis upon which equalized values were established by the department of revenue under s. 70.57, and the official or designee shall maintain the confidentiality of grantor and grantee social security numbers and telephone numbers from the returns.

**(3)** The returns may be used in any proceeding involving the requisite amount of the fee and may be produced in any proceeding subject to a valid subpoena or court order, but the court, or adjudicating agency, and the parties shall maintain the confidentially of social security numbers and telephone numbers from the returns.

**(4)** The department of workforce development may use the returns under s. 106.50, but shall maintain the confidentiality of social security numbers and telephone numbers from the returns.

**(5)** The department of revenue, county real property listers under s. 70.09, and local assessors and their employees and agents may use the returns, but shall maintain the confidentiality of social security numbers and telephone numbers from the returns.

**(6)** Governmental agencies that acquire real property for public purposes, or that administer taxes, may use the returns, but shall maintain the confidentiality of social security numbers and telephone numbers from the returns.

**(7)** In a condemnation proceeding or in an appeal of an assessment of real property, the property owners and the owners' agents may inspect the returns after signing a written agreement to maintain the confidentiality of social security numbers and telephone numbers from the returns inspected.

**(8)** A county may use the returns to develop a tract index, but shall maintain the confidentiality of social security numbers and telephone numbers from the returns.

**(9)** The department of revenue may make available to the public all information obtained from the returns except social security numbers and telephone numbers from the returns.

**History:** 1993 a. 412 ss. 3, 4; 1995 a. 27 ss. 3479, 9130 (4); 1997 a. 3; 1999 a. 82; 2007 a. 219.

**77.27 Penalty for falsifying value.** Any person who intentionally falsifies value on a return required to be filed under this subchapter may for each such offense be fined not more than $1,000 or imprisoned in the county jail not more than one year, or both.

This section is violated when a value is intentionally falsified on a Wisconsin real estate transfer return. Falsely declaring a transfer as a sale when it is in fact a gift does not constitute a violation, nor will it support the issuance of a false swearing com-

plaint under s. 946.32, but it may constitute a gift tax avoidance in violation of s. 72.86 (6), 1989 stats. 62 Atty. Gen. 251.

**77.29 Fee for recording.** In any county in which the register of deeds is compensated on a fee basis, the county shall pay the register of deeds an additional amount equal to 25 percent of the recording fees for all deeds or other instruments conveying real estate evidencing transfers subject to fee under this subchapter.

**History:** 1991 a. 316.

**77.30 Rules.** The secretary of revenue may adopt, pursuant to ch. 227, such rules as the secretary deems necessary in the administration of this subchapter and may proceed under s. 73.03 (9) to enforce its provisions.

**History:** 1991 a. 316.

SUBCHAPTER III

GENERAL SALES AND USE TAX

**77.51 Definitions.** Except where the context requires otherwise, the definitions given in this section govern the construction of terms in this subchapter.

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

1. Greeting cards.
2. Finished artwork.
3. Periodicals.
4. Video or electronic games.
5. Newspapers or other news or information products.

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

**(1ag)** "Advertising and promotional direct mail" means direct mail that has the primary purpose of attracting public attention to a product, person, business, or organization or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization.

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

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

**(1c)** "Biotechnology" means the application of biotechnologies, including recombinant deoxyribonucleic acid techniques, biochemistry, molecular and cellular biology, genetics, genetic engineering, biological cell fusion, and other bioprocesses, that use living organisms or parts of an organism to produce or modify products to improve plants or animals or improve animal health, develop microorganisms for specific uses, identify targets for small molecule pharmaceutical development, or transform biological systems into useful processes and products.

**(1d)** "Biotechnology business" means a business, as certified by the department in the manner prescribed by the department, that is primarily engaged in the application of biotechnologies that use a living organism or parts of an organism to produce or modify products to improve plants or animals, develop microorganisms for specific uses, identify targets for small molecule pharmaceutical development, or transform biological systems into useful processes and products.

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

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

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

2. The retail sale of a service and items, property, or goods under s. 77.52 (1) (b), (c), or (d), 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.

(c) 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.

(d) 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 percent 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.

(e) The retail sale of taxable tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d) and tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d) that is exempt from the taxes imposed under this subchapter, 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 under s. 77.52 (1) (b), (c), or (d) is no greater than 50 percent of the seller's total purchase price or sales price of all the tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d) 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.

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

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

**(1fr)** "Catalog" means a printed and bound, stitched, sewed, or stapled book containing a list and description of property or services for sale, regardless of whether a price is specified.

**(1g)** "Certified service provider" means an agent that is certified jointly by the states that are signatories to the agreement, as defined in s. 77.65 (2) (a), and that performs all of a seller's sales tax and use tax functions related to the seller's retail sales, except that a certified service provider is not responsible for a retailer's obligation to remit tax on the retailer's own purchases.

**(1m)** "Cloth diaper" means a cloth diaper used for sanitary purposes.

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

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

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

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

**(2)** "Contractors" and "subcontractors" are the consumers of tangible personal property or items or goods under s. 77.52 (1) (b) or (d) used by them in real property construction activities and the sales and use tax applies to the sale of tangible personal property or items or goods under s. 77.52 (1) (b) or (d) to them. A contractor engaged primarily in real property construction activities may use resale certificates only with respect to purchases of tangible personal property or items or goods under s. 77.52 (1) (b) or (d) which the contractor has sound reason to believe the contractor will sell to customers for whom the contractor will not perform real property construction activities involving the use of such tangible personal property or items or goods under s. 77.52 (1) (b) or (d). In this subsection, "real property construction activities" means activities that occur at a site where tangible personal property or items or goods under s. 77.52 (1) (b) or (d) that are applied or adapted to the use or purpose to which real property is devoted are affixed to that real property, if the intent of the person who affixes that property is to make a permanent accession to the real property. In this subsection, "real property construction activities" does not include affixing property subject to tax under s. 77.52 (1) (c) to real property or affixing to real property tangible personal property that remains tangible personal property after it is affixed.

**(2d)** "Custom farming services" include services performed by a veterinarian to animals that are farm livestock or work stock and used exclusively in the business of farming.

**(2k)** "Delivered electronically" means delivered to a purchaser by means other than by tangible storage media.

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

**(3)** "Department" means the department of revenue, its duly authorized employees and agents.

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

**(3m)** "Diaper service" means a business primarily engaged in the lease or rental, delivery and laundering of cloth diapers.

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

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

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

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

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

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

**(3pa)** "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds that are transferred electronically, including prerecorded or live music, prerecorded or live readings of books or other written materials, prerecorded or live speeches, ringtones, or other sound recordings but not including audio greeting cards sent by electronic mail.

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

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

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

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

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

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

**(3pf)** "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 sub. (12m) (a) or (15b) (a).

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

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

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

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

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

**(3pn)** "Eight hundred service" means a telecommunications service that allows a caller to dial a toll−free number without incurring a charge for the call and is marketed under "800," "855," "866," "877," or "888" toll−free calling, or any other number designated as toll−free by the federal communications commission.

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

**(3r)** "File" means mail or deliver a document that the department prescribes to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

**(3rm)** "Finished artwork" means the final art used for actual reproduction by photomechanical or other processes or for display purposes, but does not include Web site or home page designs. "Finished artwork" includes all of the following items regardless of whether such items are reproduced:

(a) Drawings.

(b) Paintings.

(c) Designs.

(d) Photographs.

(e) Lettering.

(f) Paste−ups.

(g) Mechanicals.

(h) Assemblies.

(i) Charts.

(j) Graphs.

(k) Illustrative materials.

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

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

**(4m)** "Gun club" includes a trapshooting club, skeet−shooting club, sporting−clay club, rifle and pistol club, sportsmen's club, hunting club, rod and gun club, hunting and fishing club, and conservation club. "Gun club" does not include a wild animal farm or bird hunting preserve licensed under ch. 169.

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

**(5d)** "International telecommunications services" means telecommunications services that originate or terminate in the United States, including the District of Columbia and any U.S. territory or possession and originate or terminate outside of the United States, including the District of Columbia and any U.S. territory or possession.

**(5f)** "Internet access services" means sending messages and information transmitted through the use of local, toll and wide−area telephone service; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two−way radio; paging service; or any other form of mobile and portable one−way or two−way communications; or any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities. "Internet access services" does not include telecommunications services to the extent that such services are taxable under s. 77.52 (2) (a) 5. am.

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

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

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

**(6)** "In this state" or "in the state" means within the exterior limits of the state of Wisconsin.

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

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

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

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

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

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

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

(c) 1. Transfers described under par. (a) are considered a lease or rental, regardless of whether such transfer is considered a lease

or rental under generally accepted accounting principles, or any provision of federal or local law, or any other provision of state law.

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

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

**(7h)** (a) "Manufacturing" means the production by machinery of a new article of tangible personal property or item or property under s. 77.52 (1) (b) or (c) with a different form, use, and name from existing materials, by a process popularly regarded as manufacturing, and that begins with conveying raw materials and supplies from plant inventory to the place where work is performed in the same plant and ends with conveying finished units of tangible personal property or item or property under s. 77.52 (1) (b) or (c) to the point of first storage in the same plant. "Manufacturing" includes:

1. Crushing, washing, grading and blending sand, rock, gravel and other minerals.

2. Ore dressing, including the mechanical preparation, by crushing and other processes, and the concentration, by flotation and other processes, of ore, and beneficiation, including the preparation of ore for smelting.

3. Conveying work in progress directly from one manufacturing process to another in the same plant; testing or inspecting, throughout the manufacturing process, the new article of tangible personal property or item or property under s. 77.52 (1) (b) or (c) that is being manufactured; storing work in progress in the same plant where the manufacturing occurs; assembling finished units of tangible personal property or item or property under s. 77.52 (1) (b) or (c); and packaging a new article of tangible personal property or items or property under s. 77.52 (1) (b) or (c), if the manufacturer, or another person on the manufacturer's behalf, performs the packaging and if the packaging becomes part of the new article as it is customarily offered for sale by the manufacturer.

(b) "Manufacturing" does not include storing raw materials or finished units of tangible personal property or items or property under s. 77.52 (1) (b) or (c), research or development, delivery to or from the plant, or repairing or maintaining plant facilities.

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

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

**(8)** "Newspaper" means those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly or other short intervals for the dissemination of current news and information of a general character and of a general interest to the public. In addition, any publication which qualifies as a newspaper under s. 985.03 (1) is a newspaper. "Newspaper" also includes advertising supplements if they are printed by a newspaper and distributed as a component part of one of that newspaper's publications or if they are printed by a newspaper or a commercial printer and sold to a newspaper for inclusion in publications of that newspaper. A "newspaper" does not include handbills, circulars, flyers, or the like, advertising supplements not described in this subsection which are distributed with a newspaper, nor any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within this subsection. In this subsection, advertising is not considered news of a general character and of a general interest.

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

**(9)** "Occasional sales" includes:

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

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

(e) Five or fewer auctions that are the sale of personal farm property or household goods and that are held by the same auctioneer at the same location during the year. In this paragraph, with respect to indoor locations, "location" means a building, except that in the case of a shopping center or a shopping mall "location" means a store.

**(9p)** "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.

**(9r)** (a) "Other direct mail" means any direct mail that is not advertising and promotional direct mail, regardless of whether advertising and promotional direct mail is included in the same mailing. "Other direct mail" includes all of the following:

1. Transactional direct mail that contains personal information specific to the addressee, including invoices, bills, account statements, and payroll advices.

2. Any legally required mailings, including privacy notices, tax reports, and stockholder reports.

3. Other nonpromotional direct mail, including newsletters and informational pieces, that is delivered to existing or former shareholders, customers, employees, or agents.

(b) "Other direct mail" does not include printed materials that result from developing billing information or providing any data

processing service that is more than incidental, as defined in sub. (5), to producing the other direct mail.

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

**(10)** "Person" includes any natural person, firm, partnership, limited liability company, joint venture, joint stock company, association, public or private corporation, the United States, the state, including any unit or division of the state, any county, city, village, town, municipal utility, municipal power district or other governmental unit, cooperative, unincorporated cooperative association, estate, trust, receiver, personal representative, any other fiduciary, any other legal entity, and any representative appointed by order of any court or otherwise acting on behalf of others.

**(10b)** For purposes of sub. (7h), "plant" means a parcel of property or adjoining parcels of property, including parcels that are separated only by a public road, and the buildings, machinery, and equipment that are located on the parcel, that are owned by or leased to the manufacturer.

**(10c)** For purposes of sub. (7h), "plant inventory" does not include unsevered mineral deposits.

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

**(10f)** "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, and that is paid for prior to use and sold in predetermined units or dollars that decrease with use in a known amount.

**(10m)** (a) "Prepared food" means:

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

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

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

a. The utensils are available to purchasers and the retailer's sales of prepared food under subds. 1., 2., and 4., and food for which plates, bowls, glasses, or cups are necessary to receive the food, are more than 75 percent of the retailer's total sales of all food and food ingredients, as determined under par. (c).

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

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

(b) "Prepared food" does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(10r)** "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. For purposes of this subsection, 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."

**(10rn)** "Primarily" means more than 50 percent.

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

**(11)** "Printing" and "imprinting" include lithography, photolithography, rotogravure, gravure, letterpress, silk screen printing, multilithing, multigraphing, mimeographing, photostating, steel die engraving and similar processes.

**(11b)** "Prison" means a prison described in s. 302.01, except it does not include the correctional institution under s. 301.046 (1) if the institution is the prisoner's place of residence and does not include a Type 2 prison, as defined in s. 301.01 (6).

**(11d)** For purposes of subs. (1ag), (1f), (3pf), and (9p) and ss. 77.52 (20) and (21), 77.522, and 77.54 (51), (52), and (60), "product" includes tangible personal property, and items, property, and goods under s. 77.52 (1) (b), (c), and (d), and services.

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

**(12)** "Purchase" includes:

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

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

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

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

2. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, except as provided in par. (b) 3m. and 3s., and any other expense of the seller.

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

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

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

5. Installation charges.

(b) "Purchase price" does not include:

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

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

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

3m. Taxes imposed on the seller that are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser if the law imposing or authorizing the tax provides that the seller may, but is not required to, pass on to and collect the tax from the user or consumer.

3s. The federal tax imposed on the seller in a retail sale of a heavy truck or trailer under section 4051 of the Internal Revenue Code that is separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser.

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

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

6. If a person who purchases a motor vehicle presents a statement issued under s. 218.0171 (2) (cq) to the seller at the time of purchase, and the person presents the statement to the seller within 60 days from the date of receiving a refund under s. 218.0171 (2) (b) 2. b., the trade−in amount specified in the statement issued under s. 218.0171 (2) (cq), but not to exceed the purchase price

from the sale of the motor vehicle. This subdivision applies only to the first motor vehicle purchased by a person after receiving a refund under s. 218.0171 (2) (b) 2. b.

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

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

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

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

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

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

4. One of the following also applies:

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

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

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

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

**(13)** Except as provided in sub. (13b), "retailer" includes:

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

(am) Any person making any retail sale of a motor vehicle, aircraft, snowmobile, recreational vehicle, as defined in s. 340.01 (48r), trailer, semitrailer, all−terrain vehicle, utility terrain vehicle, or boat registered or titled, or required to be registered or titled, under the laws of this state or of the United States.

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

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

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

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

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

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

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

(k) With respect to a lease, any person deriving rentals from a lease of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) sourced to this state as provided under s. 77.522.

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

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

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

(p) All persons described in this subsection regardless of all of the following:

1. Whether the transaction is mercantile in nature.

2. Whether the seller sells smaller quantities from inventory.

3. Whether the seller makes or intends to make a profit on the sale.

4. Whether the seller or the buyer receives a benefit the seller or buyer bargained for.

5. The percentage of the seller's total sales that the sale represents.

6. Any activities other than those described in pars. (a) to (o) in which the seller is engaged.

**(13b)** (a) In this subsection:

1. "Affiliate" means a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, another person. For purposes of this subdivision, a person controls another person if that person holds at least 50 percent ownership interest in the other person.

2. "Distribution facility" means an establishment where tangible personal property is stored and processed for delivery to customers and where no retail sales of the property are made.

3. "Third−party seller" means a person who owns tangible personal property or items under s. 77.52 (1) (b), who enters into a contract with a person described in par. (b) for the sale of the tangible personal property or items, and who is not an affiliate of the person described in par. (b).

(b) Except as provided in par. (c), "retailer" does not include a person, or the person's affiliates, making sales of tangible per-

sonal property or items under s. 77.52 (1) (b), if all of the following apply:

1. The person or any of the person's affiliates operates a distribution facility.

2. The person or any of the person's affiliates sells the tangible personal property or items under s. 77.52 (1) (b), on behalf of a 3rd−party seller.

3. The 3rd−party seller owns the tangible personal property or items under s. 77.52 (1) (b), and is disclosed to the customer as the seller.

4. Neither the person nor any affiliate of the person makes any sales for which the customer takes possession of the tangible personal property or items under s. 77.52 (1) (b), at a location operated by the person or any of the person's affiliates.

(c) Paragraph (b) does not apply to sales at auction; sales of tangible personal property or items under s. 77.52 (1) (b), owned or previously owned by the person operating the distribution facility or by any of the person's affiliates; or the sales of any of the following that are registered or titled, or required to be registered or titled, under the laws of this state, or of the United States:

1. Motor vehicles.
2. Aircraft.
3. Snowmobiles.
4. Recreational vehicles, as defined in s. 340.01 (48r).
5. Trailers.
6. Semitrailers.
7. All−terrain vehicles.
8. Utility terrain vehicles.
9. Boats.

**(13g)** Except as provided in sub. (13h), "retailer engaged in business in this state", for purposes of the use tax, includes any of the following:

(a) Any retailer owning any real property in this state.

(ab) Any retailer leasing or renting out any tangible personal property, or items or property under s. 77.52 (1) (b) or (c), if such property or items are located in this state.

(ac) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, an agent, or some other person, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business in this state.

(b) Any retailer having any representative, including a manufacturer's representative, agent, salesperson, canvasser, or solicitor operating in this state under authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking orders for any tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services or for the purpose of performing any of the other activities described in this subsection.

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

(d) Any person who has an affiliate in this state, if the person is related to the affiliate and if the affiliate uses facilities or employees in this state to advertise, promote, or facilitate the establishment of or market for sales of items by the related person to purchasers in this state or for providing services to the related person's purchasers in this state, including accepting returns of purchases or resolving customer complaints. For purposes of this paragraph, 2 persons are related if any of the following apply:

1. One person, or each person, is a corporation and one person and any person related to that person in a manner that would require a stock attribution from the corporation to the person or from the person to the corporation under section 318 of the Internal Revenue Code owns directly, indirectly, beneficially, or constructively at least 50 percent of the corporation's outstanding stock value.

2. One person, or each person, is a partnership, estate, or trust and any partner or beneficiary; and the partnership, estate, or trust and its partners or beneficiaries; own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the profits, capital, stock, or value of the other person or both persons.

3. An individual stockholder and the members of the stockholder's family, as defined in section 318 of the Internal Revenue Code, owns directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of both persons' outstanding stock value.

(e) Any person servicing, repairing, or installing equipment or other tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d) in this state.

(f) Any person delivering tangible personal property or items under s. 77.52 (1) (b) into this state in a vehicle operated by the person that sells the property or items that are delivered.

(g) Any person performing construction activities in this state.

**(13h)** "Retailer engaged in business in this state", notwithstanding sub. (13g), beginning on the applicable date does not include a foreign corporation that is the publisher of printed materials the only activities of which in this state do not exceed the storage of its raw materials for any length of time in this state in or on property owned by a person other than the foreign corporation and the delivery of its raw materials to another person in this state if that storage and delivery are for printing by that other person, and the purchase from a printer of a printing service or of printed materials in this state for the publisher and the storage of the printed materials for any length of time in this state in or on property owned by a person other than the publisher and do not exceed maintaining, occupying and using, directly or by means of another person, a place that is in this state, that is not owned by the publisher and that is used for the distribution of printed materials. In this subsection, "applicable date" for publishers of books and periodicals other than catalogs means January 1, 1980, and for all other publishers means January 1, 1990. In this subsection "raw materials" means tangible personal property which becomes an ingredient or component part of the printed materials or which is consumed or destroyed or loses its identity in the printing of the printed materials.

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

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

**(13rn)** "Ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer regarding a communication, but not including ringback tones or other digital audio files that are not stored on the purchaser's communication device.

**(13s)** "Safety classes" means all classes approved by the department of natural resources related to hunting, including hunting with a bow, and related to firearms, all−terrain vehicles, utility terrain vehicles, off−highway motorcycles, boats, and snowmobiles.

**(14)** "Sale" includes any of the following: the transfer of the ownership of, title to, possession of, or enjoyment of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services for use or consumption but not for resale as tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services and includes:

(a) Any sale at an auction with respect to tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) which are sold to a successful bidder, except the sale of tangible personal property, items, or goods sold at auction which are bid in by the seller and on which title does not pass to a new purchaser.

(b) The furnishing or distributing of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d),

or taxable services for a consideration by social clubs and fraternal organizations to their members or others.

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

(f) The furnishing, preparing or serving for consideration of food, meals, confections or drinks.

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

(j) The granting of possession of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) by a lessor to a lessee, or to another person at the direction of the lessee. Such a transaction is deemed a continuing sale.

(m) A transaction for which a person's books and records show the transaction created, with regard to the transferee, an obligation to pay a certain amount of money or an increase in accounts payable or, with regard to the transferor, a right to receive a certain amount of money or an increase in accounts receivable.

(n) All activities described in this subsection regardless of all of the following:

1. Whether the transaction is mercantile in nature.

2. Whether the seller sells smaller quantities from inventory.

3. Whether the seller makes or intends to make a profit on the sale.

4. Whether the seller or the buyer receives a benefit the seller or buyer bargained for.

5. The percentage of the seller's total sales that the sale represents.

6. Any activities other than those described in sub. (13) (a) to (o) in which the seller is engaged.

**(14a)** For purposes of ss. 77.54, 77.55, and 77.56, "sale" includes licenses, leases, and rentals.

**(14g)** "Sale" does not include:

(a) The transfer of property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) to a corporation upon its organization solely in consideration for the issuance of its stock;

(b) The contribution of property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) to a newly formed partnership solely in consideration for a partnership interest therein;

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

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

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

(d) The distribution of property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) by a corporation to its stockholders as a dividend or in whole or partial liquidation;

(e) The distribution of property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) by a partnership to its partners in whole or partial liquidation;

(em) The distribution of property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) by a limited liability company to its members in whole or partial liquidation;

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

(fm) The transfer of transmission facilities, as defined in s. 196.485 (1) (h), to a transmission company, as defined in s. 196.485 (1) (ge), after the organizational start−up date, as defined in s. 196.485 (1) (dv), of such company in exchange for securities, as defined in s. 196.485 (1) (fe);

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

(h) Any transfer of all or substantially all the property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) held or used by a person in the course of an activity requiring the holding of a seller's permit, if after the transfer the real or ultimate ownership of the property, items, or goods is substantially similar to that which existed before the transfer. For the purposes of this section, stockholders, bondholders, partners, members or other persons holding an interest in a corporation or other entity are regarded as having the real or ultimate ownership of the property, items, or goods of the corporation or other entity. In this paragraph, "substantially similar" means 80 percent or more of ownership.

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

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

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

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

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

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

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

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

2. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on

the seller, except as provided in par. (b) 3m. and 3s., and any other expense of the seller.

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

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

b. If a shipment includes property or items that are subject to tax under this subchapter and property or items that are not subject to tax under this subchapter, the amount of the delivery charge that the seller allocates to the property and items that are subject to tax under this subchapter is based either on the total sales price of the property and items that are subject to tax under this subchapter as compared to the total sales price of all the property and items or on the total weight of the property and items that are subject to tax under this subchapter as compared to the total weight of all the property and items.

5. Installation charges.

(b) "Sales price" does not include:

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

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

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

3m. Taxes imposed on the seller that are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser if the law imposing or authorizing the tax provides that the seller may, but is not required to, pass on to and collect the tax from the user or consumer.

3s. The federal tax imposed on the seller in a retail sale of a heavy truck or trailer under section 4051 of the Internal Revenue Code that is separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser.

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

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

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

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

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

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

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

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

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

4. One of the following also applies:

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

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

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

**(16)** "Sales tax" means the tax imposed by s. 77.52.

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

(a) Whether the transaction is mercantile in nature.

(b) Whether the seller sells smaller quantities from inventory.

(c) Whether the seller makes or intends to make a profit on the sale.

(d) Whether the seller or the buyer receives a benefit the seller or buyer bargained for.

(e) The percentage of the seller's total sales that the sale represents.

(f) Any activities other than those described in sub. (13) (a) to (o) in which the seller is engaged.

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

(a) The location of the telecommunications equipment to which a customer's telecommunications service is charged and from which the telecommunications service originates or terminates, regardless of where the telecommunications service is billed or paid.

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

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

**(17r)** "Sign" means write one's signature or, if the department prescribes another method of authenticating, use that other method.

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

**(17x)** "Specified digital goods" means digital audio works, digital audiovisual works, and digital books. For purposes of this subchapter, the sale, license, lease, or rental of or the storage, use,

or other consumption of a digital code is treated the same as the sale, license, lease, or rental of or the storage, use, or other consumption of any specified digital goods for which the digital code relates.

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

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

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

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

(a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered to a purchaser by an electronic transmission, if the purchaser's primary purpose for the underlying transaction is the processed data.

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

(c) Tangible personal property.

(d) Advertising, including directory advertising.

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

(f) Internet access services.

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

(h) Ancillary services.

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

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

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

**(22)** (a) "Use" includes the exercise of any right or power over tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services incident to the ownership, possession or enjoyment of the property, items, goods, or services, or the results produced by the services, including installation or affixation to real property and including the possession of, or the exercise of any right or power over tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), by a lessee under a lease, except that "use" does not include the activities under sub. (18).

(b) In this subsection "enjoyment" includes a purchaser's right to direct the disposition of property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), whether or not the purchaser has possession of the property, items, or goods. "Enjoyment" also includes, but is not limited to, having shipped into this state by an out−of−state supplier printed material which is designed to promote the sale of property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services, or which is otherwise related to the business activities, of the purchaser of the printed material or printing service.

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

**(23)** "Use tax" means the tax imposed by s. 77.53.

**(24)** "Value−added nonvoice data service" means a service that otherwise meets the definition of telecommunications services, in which computer processing applications are used to act on the form, content, code, or protocol of the information or data provided by the service and are used primarily for a purpose other than for transmitting, conveying, or routing data.

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

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

**History:** 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102; 2003 a. 48; 2005 a. 25, 327, 441, 479; 2007 a. 11, 20, 130; 2009 a. 2 ss. 225 to 345, 389; 2009 a. 12 s. 18; 2009 a. 28 ss. 1830b to 1836h, 1844 to 1846; 2009 a. 276, 330; 2011 a. 208; 2013 a. 20 ss. 1475 to 1484, 1489 to 1491; 2015 a. 55, 170, 361; s. 35.17 correction in (13b) (a) 3.

A tax on personal property assets was upheld since the seller had a permit under sub. (10) (a) [now sub. (9) (a)]. Ramrod, Inc. v. DOR, 64 Wis. 2d 499, 219 N.W.2d 604 (1974).

Provisions of the UCC as to the time title passes are inapplicable to sales tax law. Application of s. 77.51 is discussed. Harold W. Fuchs Agency, Inc. v. DOR, 91 Wis. 2d 283, 282 N.W.2d 625 (Ct. App. 1979).

The sale of business assets of a taxpayer who held a seller's permit was not exempted as an "occasional sale" under sub. (10) (a) [now sub. (9) (a)]. Constitutionality is discussed. Midcontinent Broadcasting Co. v. DOR, 98 Wis. 2d 379, 297 N.W.2d 191 (1980).

A manhole fabricator was not engaged in real property construction activities under sub. (2). Advance Pipe & Supply v. DOR, 128 Wis. 2d 431, 383 N.W.2d 502 (Ct. App. 1986).

Photocopying expenses billed to a law firm's clients are not subject to sales tax. Frisch, Dudek & Slattery v. DOR, 133 Wis. 2d 444, 396 N.W.2d 355 (Ct. App. 1986).

Whether articles of personal property are fixtures and thus real estate, is determined by the following tests: 1) actual physical annexation to the real estate; 2) application or adaptation to the use or purpose to which the realty is devoted; and 3) an intention on the part of the person making the annexation to make a permanent accession to the freehold. All City Communication Company, Inc. v. DOR, 2003 WI App 77, 263 Wis. 2d 394, 661 N.W.2d 845, 02−1201.

For the use tax to apply to intercompany transfers with wholly−owned subsidiaries, the subsidiaries that transferred the fixed assets must be considered "retailers" under s. 77.51 (13). It is not the case that Wisconsin has a statutory scheme that taxes all transfers of tangible personal property, unless an explicit exemption applies. When the person transferring tangible personal property lacks mercantile intent, he or she will not be subject to tax, even though no explicit exemption applies. Wisconsin Department of Revenue v. River City Refuse Removal, Inc. 2007 WI 27, 299 Wis. 2d 561, 729 N.W.2d 396, 04−2468.

**77.52 Imposition of retail sales tax. (1)** (a) For the privilege of selling, licensing, leasing or renting tangible personal property at retail a tax is imposed upon all retailers at the rate of 5 percent of the sales price from the sale, license, lease or rental of tangible personal property sold, licensed, leased or rented at retail in this state, as determined under s. 77.522.

(b) For the privilege of selling, licensing, leasing, or renting at retail coins and stamps of the United States that are sold, licensed,

leased, rented, or traded as collectors' items above their face value, a tax is imposed on all retailers at the rate of 5 percent of the sales price from the sale, license, lease, or rental of such coins and stamps.

(c) For the privilege of leasing property that is affixed to real property, a tax is imposed on all retailers at the rate of 5 percent of the sales price from the lease of such 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.

(d) A tax is imposed on all retailers at the rate of 5 percent of the sales price from the sale, lease, license, or rental of specified digital goods and additional digital goods 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.

**(1b)** All sales, licenses, leases, or rentals of tangible personal property or items, property, or goods under sub. (1) (b), (c), or (d) at retail in this state are subject to the tax imposed under sub. (1) unless an exemption in this subchapter applies.

**(1m)** The sales tax applies to the receipts of operators of vending machines located on army, navy or air force installations in this state and dispensing tangible personal property. This subsection shall not be deemed to require payment of sales tax measured by receipts of such operators who lease the machines to exchanges of the army, air force, navy or marine corps which acquire title to and sell the merchandise through the machines to authorized purchasers from such exchanges. The term "operator" as used in this subsection, means any person who owns or possesses vending machines and who controls the operations of the machines as by placing the merchandise therein or removing the coins therefrom, and who has access thereto for any purpose connected with the sale of merchandise through the machines, and whose compensation is based, in whole or in part, upon receipts from sales made through such machines.

**(2)** For the privilege of selling, licensing, performing or furnishing the services described under par. (a) at retail in this state, as determined under s. 77.522, to consumers or users, regardless of whether the consumer or user has the right of permanent use or less than the right of permanent use and regardless of whether the service is conditioned on continued payment from the purchaser, a tax is imposed upon all persons selling, licensing, performing or furnishing the services at the rate of 5 percent of the sales price from the sale, license, performance or furnishing of the services.

(a) The tax imposed herein applies to the following types of services:

1. The furnishing of rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations. In this subdivision, "transient" means any person residing for a continuous period of less than one month in a hotel, motel or other furnished accommodations available to the public. In this subdivision, "hotel" or "motel" means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, lodging houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins and any other building or group of buildings in which accommodations are available to the public, except accommodations, including mobile homes as defined in s. 101.91 (10), manufactured homes as defined in s. 101.91 (2), and recreational vehicles as defined in s. 340.01 (48r), rented for a continuous period of more than one month and accommodations furnished by any hospitals, sanatoriums, or nursing homes, or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes provided that no part of the net earnings of such corporations and associations inures to the benefit of any private shareholder or individual. In this subdivision, "one month" means a calendar month or 30 days, whichever is less, counting the first day of the rental and not counting the last day of the rental.

2. a. Except as provided in subd. 2. b. and c., the sale of admissions to amusement, athletic, entertainment or recreational events or places except county fairs, the sale, rental or use of regular bingo cards, extra regular cards, special bingo cards and the sale of bingo supplies to players and the furnishing, for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational devices or facilities, including the sale or furnishing of use of recreational facilities on a periodic basis or other recreational rights, including but not limited to membership rights, vacation services and club memberships.

b. Taxable sales do not include the sale of admissions by a gun club, including the sale of a gun club membership, if the gun club is a nonprofit organization and if the gun club provides safety classes to at least 25 individuals in the calendar year.

c. Taxable sales do not include the sale of admissions by a nonprofit organization to participate in any sports activity in which more than 50 percent of the participants are 19 years old or younger.

5. a. The sale of Internet access services.

am. The sale of prepaid calling services and intrastate, interstate, and international telecommunications services, except interstate 800 services.

c. The sale of ancillary services, except detailed telecommunications billing services.

5m. The sale of services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser's direction, but not including services that are taxable under subd. 5. or services that are incidental, as defined in s. 77.51 (5), to another service that is not taxable under this subchapter and sold to the purchaser of the incidental service.

6. Laundry, dry cleaning, pressing, and dyeing services, except when performed on raw materials or goods in process destined for sale, except when performed on cloth diapers by a diaper service, and except when the service is performed by the customer through the use of self−service machines.

7. Photographic services including the processing, printing and enlarging of film as well as the service of photographers for the taking, reproducing and sale of photographs.

8m. The towing and hauling of motor vehicles by a tow truck, as defined in s. 340.01 (67n), unless at the time of towing or hauling a sale sourced to this state under s. 77.522 of the motor vehicle to the purchaser would be exempt from the taxes imposed under this subchapter, not including the exempt sale of a motor vehicle to a nonresident under s. 77.54 (5) (a) and nontaxable sales described under s. 77.585 (8).

9. Parking or providing parking space for motor vehicles and aircraft for a consideration and docking or providing storage space for boats for a consideration.

10. Except for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of any aircraft or aircraft parts; except for services provided by veterinarians; and except for installing or applying tangible personal property, or items or goods under sub. (1) (b) or (d), that, subject to par. (ag), when installed or applied, will constitute an addition or capital improvement of real property; the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of all items of tangible personal property or items, property, or goods under sub. (1) (b), (c), or (d), unless, at the time of that repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance, a sale in this state of the type of property, item, or good repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected, or maintained would

have been exempt to the customer from sales taxation under this subchapter, other than the exempt sale of a motor vehicle or truck body to a nonresident under s. 77.54 (5) (a) and other than nontaxable sales under s. 77.522 or unless the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance is provided under a contract that is subject to tax under subd. 13m. The tax imposed under this subsection applies to the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of items listed in par. (ag), regardless of whether the installation or application of tangible personal property or items, property, or goods under sub. (1) (b), (c), or (d) related to the items is an addition to or a capital improvement of real property, except that the tax imposed under this subsection does not apply to the original installation or the complete replacement of an item listed in par. (ag), if that installation or replacement is a real property construction activity under s. 77.51 (2).

11. The producing, fabricating, processing, printing, or imprinting of tangible personal property or items, property, or goods under sub. (1) (b), (c), or (d) for a consideration for consumers who furnish directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting. This subdivision does not apply to the printing or imprinting of tangible personal property or items, property, or goods under sub. (1) (b), (c), or (d) that results in printed material, catalogs, or envelopes that are exempt under s. 77.54 (25), (25m), or (59).

12. The sale of cable television system services, or video services, as defined in s. 66.0420 (2) (y), including installation charges.

13m. 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), 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.

20. The sale of landscaping and lawn maintenance services including landscape planning and counseling, lawn and garden services such as planting, mowing, spraying and fertilizing and shrub and tree services.

(ag) For purposes of par. (a) 10., the following items shall be considered to have retained their character as tangible personal property, regardless of the extent to which the item is fastened to, connected with, or built into real property:

1. Furnaces.
2. Boilers.
3. Stoves.
4. Ovens, including associated hoods and exhaust systems.
5. Heaters.
6. Air conditioners.
7. Humidifiers.
8. Dehumidifiers.
9. Refrigerators.
10. Coolers.
11. Freezers.
12. Water pumps.
13. Water heaters.
14. Water conditioners and softeners.
15. Clothes washers.
16. Clothes dryers.
17. Dishwashers.
18. Garbage disposal units.
19. Radios and radio antennas.
20. Incinerators.
21. Television receivers and antennas.
22. Record players.
23. Tape players.
24. Jukeboxes.
25. Vacuum cleaners.
26. Furniture and furnishings.
27. Carpeting and rugs.
28. Bathroom fixtures.
29. Sinks.
30. Awnings.
31. Blinds.
32. Gas and electric logs.
33. Heat lamps.
34. Electronic dust collectors.
35. Grills and rotisseries.
36. Bar equipment.
37. Intercoms.
38. Recreational, sporting, gymnasium, and athletic goods and equipment including, by way of illustration but not of limitation, all of the following:
    a. Bowling alleys.
    b. Golf practice equipment.
    c. Pool tables.
    d. Punching bags.
    e. Ski tows.
    f. Swimming pools.
39. Equipment in offices, business facilities, schools, and hospitals but not in residential facilities including personal residences, apartments, long−term care facilities, as defined under s. 16.009 (1) (em), prisons, mental health institutes, as defined in s. 51.01 (12), centers for the developmentally disabled, as defined in s. 51.01 (3), Type 1 juvenile correctional facilities, as defined in s. 938.02 (19), or similar facilities including, by way of illustration but not of limitation, all of the following:
    a. Lamps.
    b. Chandeliers.
    c. Fans.
    d. Venetian blinds.
    e. Canvas awnings.
    f. Office and business machines.
    g. Ice and milk dispensers.
    h. Beverage−making equipment.
    i. Vending machines.
    j. Soda fountains.
    k. Steam warmers and tables.
    L. Compressors.
    m. Condensing units and evaporative condensers.
    n. Pneumatic conveying systems.
40. Laundry, dry cleaning, and pressing machines.
41. Power tools.
42. Burglar alarm and fire alarm fixtures.
43. Electric clocks.
44. Electric signs.

(am) For purposes of par. (a) 12. "cable television system" means any facility which, for a fee, regularly amplifies and transmits by wire, coaxial cable, lightwave or microwave, simultaneously to 50 or more subscribers, programs broadcast by television or radio stations or originated by themselves or any other party. "Cable television system" does not include a master antenna system which serves one residential, commercial or government building or complex of buildings under common ownership or control if that facility does not provide any broadcast signals other than those which may be viewed in that facility.

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

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

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

**(3)** The taxes imposed by this section may be collected from the consumer or user.

**(5)** The department may by rule provide that the amount collected by the retailer from the consumer or user in reimbursement of the retailer's tax be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale.

**(7)** (a) Except as provided in par. (b), every person desiring to operate as a seller within this state who holds a valid certificate under s. 73.03 (50) shall file with the department an application for a permit for each place of operations. Every application for a permit shall be made upon a form prescribed by the department and shall set forth the name under which the applicant intends to operate, the location of the applicant's place of operations, and the other information that the department requires. If an owner elects under s. 77.58 (3) (a) to file a separate electronic return for each of the owner's disregarded entities, each disregarded entity is an applicant under this subsection. Except as provided in sub. (7b), the application shall be signed by the owner if a sole proprietor; in the case of sellers other than sole proprietors, the application shall be signed by the person authorized to act on behalf of such sellers. A nonprofit organization that has a sales price taxable under s. 77.54 (7m) shall obtain a seller's permit and pay taxes under this subchapter on all taxable sales prices received after it is required to obtain that permit. If that organization becomes eligible later for the exemption under s. 77.54 (7m) except for its possession of a seller's permit, it may surrender that permit.

**NOTE: Par. (a) is shown as affected by 2015 Wis. Acts 84 and 216 and as merged by the legislative reference bureau under s. 13.92 (2) (i).**

(b) An out−of−state business, as defined in s. 323.12 (5) (a) 6., performing disaster relief work, as defined in s. 323.12 (5) (a) 3., is not required to register with the department under par. (a) and is not required to obtain a certificate under s. 73.03 (50) for sales made during a disaster period, as defined in s. 323.12 (5) (a) 2.

**(7b)** Any person who may register under sub. (7) may designate an agent, as defined in s. 77.524 (1) (ag), to register with the department under sub. (7), in the manner prescribed by the department.

**(9)** After compliance with sub. (7) and s. 77.61 (2) by the applicant, the department shall grant and issue to each applicant a separate permit for each place of operations within the state. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of operations at the place designated in it. It shall at all times be conspicuously displayed at the place for which it was issued.

**(11)** If any person fails to comply with any provision of this subchapter relating to the sales tax or any rule of the department relating to the sales tax adopted under this subchapter, is delinquent in respect to any tax imposed by the department or fails timely to file any return or report in respect to any tax under ch. 71, 72, 76, 77, 78 or 139 after having been requested to file that return or report, the department upon hearing, after giving the person 10 days' notice in writing specifying the time and place of hearing and requiring the person to show cause why the permit should not be revoked or suspended, may revoke or suspend any one or more of the permits held by the person. The department shall give to the person written notice of the suspension or revocation of any of the permits. The notices required in this subsection may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. If the department suspends or revokes a permanent permit under this subsection, it may grant a temporary permit that is valid for one month and may then grant additional temporary permits if the person pays all amounts owed under this chapter for the month for which the previous temporary permit was issued. Persons who receive a temporary permit waive the notice requirement under s. 77.61 (2). The department shall not issue a new permanent permit after the revocation of a permit unless it is satisfied that the former holder of the permit will comply with the provisions of this subchapter, the rules of the department relating to the sales tax and the provisions relating to other taxes administered by the department.

**(12)** A person who operates as a seller in this state without a permit or after a permit has been suspended or revoked or has expired, unless the person is not required to obtain a permit as provided under sub. (7) (b) or unless the person has a temporary permit under sub. (11), and each officer of any corporation, partnership member, limited liability company member, or other person authorized to act on behalf of a seller who so operates, is guilty of a misdemeanor. Except for a person who is registered in accordance with the agreement, as defined in s. 77.65 (2) (a), permits shall be held only by persons actively operating as sellers of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or taxable services. Any person not so operating shall forthwith surrender that person's permit to the department for cancellation. The department may revoke the permit of a person found not to be actively operating as a seller of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or taxable services.

**(13)** For the purpose of the proper administration of this section and to prevent evasion of the sales tax it shall be presumed that all receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services is not a taxable sale at retail is upon the person who makes the sale unless that person takes from the purchaser an electronic or a paper certificate, in a manner prescribed by the department, to the effect that the property, item, good, or service is purchased for resale or is otherwise exempt, except that no certificate is required for the sale of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services that are exempt under s. 77.54 (5) (a) 3., (7), (7m), (8), (10), (11), (14), (15), (17), (20n), (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46), (51), and (52).

**(14)** (a) The certificate referred to in sub. (13) relieves the seller of the tax otherwise applicable only if the seller obtains a fully completed exemption certificate, or the information required to prove the exemption, from a purchaser no later than 90 days after the date of the sale of the tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services, except as provided in par. (am). The certificate under sub. (13) shall not relieve the seller of the tax otherwise applicable if the seller fraudulently fails to collect sales tax, solicits the purchaser to claim an unlawful exemption, or accepts an exemption certificate from a purchaser who claims to be an entity that is not subject to the taxes imposed under this subchapter, if the subject of the transaction sought to be covered by the exemption certificate is received by the purchaser at a location operated by the seller in this state and the exemption certificate clearly and affirmatively indicates that the claimed exemption is not available in this state. The certificate referred to in sub. (13) shall provide information that identifies the

purchaser and shall indicate the basis for the claimed exemption and a paper certificate shall be signed by the purchaser. The certificate shall be in such form as the department prescribes by rule.

(am) 1. If the seller has not obtained a fully completed exemption certificate or the information required to prove the exemption, as provided in par. (a), the seller may, no later than 120 days after the department requests that the seller substantiate the exemption, either provide proof of the exemption to the department by other means or obtain, in good faith, a fully completed exemption certificate from the purchaser.

2. An exemption certificate is received by the seller in good faith if the certificate claims an exemption for which all of the following apply:

a. It was an exemption authorized by law on the date of the transaction in the jurisdiction where the transaction is sourced.

b. It could be applicable to the property, item, good, or service being purchased.

c. It is reasonable for the purchaser's type of business.

3. If the seller obtains the information described in subd. 2., the seller is relieved of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge, or had reason to know, at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction. In order to enforce this subdivision, the state must establish that the seller had knowledge, or had reason to know, at the time the information was provided that the information was materially false.

(bm) A certified service provider is relieved from liability for the tax otherwise applicable to the same extent as the seller, who is the certified service provider's client, is relieved from liability for the tax otherwise applicable under par. (a) or (am).

**(15)** If a purchaser who purchases tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services without paying a sales tax or use tax on such purchase because such property, items, goods, or services were for resale makes any use of the property, items, goods, or services other than retention, demonstration or display while holding the property, items, goods, or services for sale, lease or rental in the regular course of the purchaser's operations, the use shall be taxable to the purchaser under s. 77.53 as of the time that the property, items, goods, or services are first used by the purchaser, and the purchase price of the property, items, goods, or services to the purchaser shall be the measure of the tax.

**(16)** Any person who gives a resale certificate for property, or items, property, or goods under sub. (1) (b), (c), or (d), or services which that person knows at the time of purchase is not to be resold by that person in the regular course of that person's operations as a seller for the purpose of evading payment to the seller of the amount of the tax applicable to the transaction is guilty of a misdemeanor. Any person certifying to the seller that the sale of property, or items, property, or goods under sub. (1) (b), (c), or (d), or taxable service is exempt, knowing at the time of purchase that it is not exempt, for the purpose of evading payment to the seller of the amount of the tax applicable to the transaction, is guilty of a misdemeanor.

**(17)** If a purchaser gives a certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

**(17m)** (a) A person who holds a valid certificate issued under s. 73.03 (50) may apply for a direct pay permit by filing a completed form that the department prescribes.

(b) The department shall issue a direct pay permit, at the beginning of a taxpayer's taxable year, if the following requirements are fulfilled:

1. Because of the nature of the applicant's business, issuing the permit will significantly reduce the work of administering the taxes under this subchapter.

2. The applicant's accounting system will clearly indicate the amount of tax that the applicant owes under this subchapter.

3. The applicant makes enough purchases that are taxable under this subchapter to justify the expense of regular audits by the department.

4. The applicant is not liable for delinquent taxes; including costs, penalties, surcharges and interest; under ch. 71, 72, 76, 78 or 139 or this chapter of $400 or more if any part of the tax is delinquent for at least 5 months.

5. It is in this state's best interests to issue the permit.

6. The applicant purchases enough tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) under circumstances that make it difficult to determine whether the property, items, or goods will be subject to a tax under this subchapter.

7. The applicant holds a permit under sub. (9) or is registered under s. 77.53 (9).

(c) A holder of a permit that is issued under par. (b) may not transfer or assign it.

(d) The department may revoke a permit that is issued under par. (b) if the holder misuses it or the department determines that revocation is in this state's best interests.

(e) A retailer may not collect a tax under this subchapter, and is not liable for a tax under this subchapter, on any sale, except those of a type specified as ineligible for an exemption under this paragraph by a rule promulgated by the department, for which the buyer furnishes to the retailer a copy of the permit that is issued under par. (b) or a statement that the buyer holds such a permit, a statement of that permit's number and a statement of the date that the permit was issued.

(f) A person who holds a permit that is issued under par. (b) shall keep a record of all retailers from whom the person made a purchase for which the person used a permit that is issued under par. (b) and shall do one of the following:

1. Fulfill the requirements for an exempt sale under par. (e) for every purchase that the person makes that may be exempt under that paragraph and pay the tax under s. 77.53 (1) to the department on all of those purchases for which the tax is due.

2. Maintain accounting records that show the tax under ss. 77.52 (1) and (2) and 77.53 (3) paid on each purchase during each reporting period under s. 77.58 and the total tax paid during each reporting period, pay the tax under ss. 77.52 (1) and (2) and 77.53 (3) on either all or none of the purchases made from each retailer during each reporting period and pay the tax under s. 77.53 (1) to the department on all of the purchases for which the tax is due.

**(18)** (am) If any retailer liable for any amount of tax under this subchapter sells out the retailer's business or stock of goods or quits the business, the retailer's successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the department that it has been paid or a certificate stating that no amount is due.

(bm) If the purchaser of a stock of goods fails to withhold from the purchase price as required, the purchaser becomes personally liable for the payment of the amount required to be withheld by the purchaser to the extent of the purchase price valued in money. Within 60 days after receiving a written request from the purchaser for a certificate, or within 60 days from the date the former owner's records are made available for audit, whichever period expires later, but in any event not later than 90 days after receiving the request, the department shall either issue the certificate or mail notice to the purchaser at the purchaser's address as it appears on the records of the department of the amount that must be paid as

a condition of issuing the certificate. Failure of the department to mail the notice will release the purchaser from any further obligation to withhold the purchase price as above provided. The obligation of the successor may be enforced within 4 years of the time the retailer sells out the retailer's business or stock of goods or at the time that the determination against the retailer becomes final, whichever event occurs later.

**(19)** The department shall by rule provide for the efficient collection of the taxes imposed by this subchapter on sales of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services by persons not regularly engaged in selling at retail in this state or not having a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessions at fairs and carnivals, and the like. The department may authorize such persons to sell property or items, property or goods under sub. (1) (b), (c), or (d) or sell, perform, or furnish services on a permit or nonpermit basis as the department by rule prescribes and failure of any person to comply with such rules constitutes a misdemeanor.

**(20)** (a) Except as provided in par. (b), the entire sales price of a bundled transaction is subject to the tax imposed under this subchapter.

(b) 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 the tax imposed under this subchapter, that portion of the sales price is not taxable under this subchapter. This paragraph 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.

**(21)** (a) Except as provided in par. (b), a person who provides a product that is not distinct and identifiable because it is provided free of charge, as provided in s. 77.51 (3pf) (b), is the consumer of the product that is provided free of charge and shall pay the tax imposed under this subchapter on the purchase price of that product.

(b) Except as provided in sub. (2m) (a), a person who provides a product that is not distinct and identifiable because it is provided free of charge to a purchaser who must also purchase another product that is subject to the tax imposed under this subchapter from that person in the same transaction may purchase the product provided free of charge without tax, for resale.

**(22)** With regard to transactions described in s. 77.51 (1f) (b), the service provider is the consumer of the tangible personal property or items, property, or goods under sub. (1) (b), (c), or (d) and shall pay the tax imposed under this subchapter on the purchase price of the property, items, or goods.

**(23)** With regard to transactions described in s. 77.51 (1f) (c), the service provider is the consumer of the service that is essential to the use or receipt of the other service and shall pay the tax imposed under this subchapter on the purchase price of the service that is essential to the use or receipt of the other service.

**History:** 1973 c. 156; 1975 c. 39; 1977 c. 29, 142, 418; 1979 c. 174, 221; 1981 c. 20, 317; 1983 a. 2, 27; 1983 a. 189 ss. 99, 103, 107, 329 (12); 1983 a. 341, 510, 544; 1985 a. 29, 149; 1987 a. 27, 399; 1989 a. 31, 335; 1991 a. 39, 316; 1993 a. 112, 213, 308, 437; 1995 a. 27, 225, 351; 1997 a. 27, 237, 291; 1999 a. 9, 83; 1999 a. 150 s. 672; 2001 a. 16, 104, 109; 2003 a. 33, 321; 2005 a. 149, 327, 344; 2007 a. 11, 20, 42, 97; 2009 a. 2, 12, 28, 330; 2011 a. 18, 32; 2013 a. 20, 185; 2015 a. 84, 216; s. 13.92 (2) (i).

Meals served by a religious order in carrying out its religious work were not subject to sales tax for that portion of charges made to guests for lodging, food, and use of the order's facilities. Kollasch v. Adamany, 104 Wis. 2d 552, 313 N.W.2d 47 (1981).

Sub. (18) provides no relief from successor liability when the entire purchase price is paid to a secured creditor. Kastengren v. DOR, 179 Wis. 2d 587, 508 N.W.2d 431 (Ct. App. 1993).

Contractors are considered to be the consumers of personal property used by them in real property construction and are subject to sales tax. Performing a real property construction activity for an exempt entity does not make a contractor exempt. Zignego Co., Inc. v. DOR, 211 Wis. 2d 819, 565 N.W.2d 590 (Ct. App. 1997), 96−1965.

A resort's sale of flexible time−share interests in condominiums was subject to sales tax. Sub. (2) (a) 1., as applied to sales of flexible time−shares, does not violate the Art. VIII, s.1,"uniformity clause," nor does it violate guarantees of equal protection. Telemark Development, Inc. v. DOR, 218 Wis. 2d 809, 581 N.W.2d 585 (Ct. App. 1998), 97−3133.

A communications tower constructed on leased land was properly deemed "personal property." The owner of the tower was liable for sales tax on proceeds from renting or leasing space on the tower, and a renter of space on the tower was liable for use tax on its rental of space on the tower. All City Communication Company, Inc. v. DOR, 2003 WI App 77, 263 Wis. 2d 394, 661 N.W.2d 845, 02−1201.

Whether Milwaukee Symphony Orchestra concerts were entertainment events, ticket sales to which are subject to sales tax under sub. (2) (a) 2., depends on the "primary purpose" of the event. The determination is a holistic one that looks to the motivation, mission, or purpose of the sponsoring organization, as well as any evidence of the motivation and reaction of those paying admission and ultimately the nature of the place or event itself. If the primary purpose of an event or place is 50 percent or more "amusement, athletic, entertainment or recreational," then admission to the event or place is taxable under this provision of the statute. Milwaukee Symphony Orchestra v. DOR, 2010 WI 33, 324 Wis. 2d 68, 781 N.W.2d 674, 08−1684.

Sub. (2) (a) 1. does not impose a sales tax on those selling the service of making reservations on behalf of members of the public with those who furnish rooms or lodging. The omission of the words "the sale of" in sub. (2) (a) 1. indicates that the legislature did not intend to impose a tax on those selling the services of making hotel reservations but not actually furnishing the accommodations. Wisconsin Department of Revenue v. Orbitz, L.L.C. 2016 WI App 22, 367 Wis. 2d 593, 877 N.W.2d 372, 15−0200.

Changes on the Horizon: Sales and Use Tax in the E−Commerce Era. Pascaly. Wis. Law. Oct. 2015.

**77.522 Sourcing. (1)** GENERAL. (a) In this section:

1. "Receive" means taking possession of tangible personal property or items or property under s. 77.52 (1) (b) or (c); making first use of services; or taking possession or making first use of digital goods under s. 77.52 (1) (d), whichever comes first. "Receive" does not include a shipping company taking possession of tangible personal property or items or property under s. 77.52 (1) (b) or (c) on a purchaser's behalf.

2. "Transportation equipment" means any of the following:

a. Locomotives and railcars that are used to carry persons or property in interstate commerce.

b. Trucks and truck tractors that have a gross vehicle weight rating of 10,001 pounds or greater, trailers, semitrailers, and passenger buses, if such vehicles are registered under the international registration plan under s. 341.405 and operated under the authority of a carrier that is authorized by the federal government to carry persons or property in interstate commerce.

c. Aircraft that are operated by air carriers that are authorized by the federal government or a foreign authority to carry persons or property in interstate or foreign commerce.

d. Containers that are designed for use on the vehicles described in subd. 2. a. to c. and component parts attached to or secured on such vehicles.

(b) Except as provided in par. (c) and subs. (3), (4), and (5), the location of a sale is determined 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 subds. 1. and 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 a sale is not in bad faith.

4. If the location of a sale of a product cannot be determined under subds. 1. to 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 that address is not in bad faith.

5. If the location of a sale of a product cannot be determined under subds. 1. to 4., including the circumstance in which the seller has insufficient information to determine the locations under subds. 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.

(c) 1. Except as provided in subd. 3., the sale of advertising and promotional direct mail, including a sale characterized under the laws of this state as the sale of a service when that service is an integral part of the production and distribution of printed material that meets the definition of advertising and promotional direct mail, is sourced to the location from which the advertising and promotional direct mail is shipped, if the purchaser does not provide to the seller a direct pay permit, an exemption certificate claiming direct mail, or other information that indicates the appropriate taxing jurisdiction to which the advertising and promotional direct mail is delivered to the ultimate recipients. If the purchaser provides an exemption certificate claiming direct mail or direct pay permit to the seller, the purchaser shall source the sales to the jurisdictions to which the advertising and promotional direct mail is delivered to the recipients and pay or remit, as appropriate, to the department the tax imposed under s. 77.53 on all purchases for which the tax is due and the seller, in the absence of bad faith, is relieved of all obligation to collect, pay, or remit the tax on any transaction to which the direct pay permit or exemption certificate applies. If the purchaser provides delivery information indicating the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients, the seller shall source the sale to those jurisdictions and collect and remit the tax according to the delivery information provided by the purchaser and, in the absence of bad faith, the seller shall be relieved of any further obligation to collect tax on the sale of advertising and promotional direct mail for which the seller has sourced the sale and collected tax pursuant to the delivery information provided by the purchaser. If a transaction is a bundled transaction that includes advertising and promotional direct mail, this subdivision only applies if the primary purpose of the transaction is the sales of products or services that meet the definition of advertising and promotional direct mail.

2. The sale of other direct mail, including a sale characterized under the laws of this state as the sale of a service when that service is an integral part of the production and distribution of printed material that meets the definition of other direct mail, is sourced under par. (b) 3. if the purchaser does not provide to the seller a direct pay permit or an exemption certificate claiming direct mail. If the purchaser provides an exemption certificate claiming direct mail or direct pay permit to the seller, the purchaser shall source the sale to the jurisdictions to which the other direct mail is to be delivered to the recipients and the purchaser shall pay or remit, as appropriate, to the department the tax imposed under s. 77.53 on all purchases for which the tax is due and the seller, in the absence of bad faith, is relieved of all obligation to collect, pay, or remit tax on any transaction to which the direct pay permit or exemption certificate claiming direct mail applies.

3. If advertising and promotional direct mail and other direct mail are included in a single mailing, the sale of that mailing is sourced the same as a sale of other direct mail.

4. Transactions that include the development of billing information or the provision of a data processing service that is more than incidental to producing direct mail are not direct mail and are sourced under par. (b), but transactions that include incidental data processing services are direct mail and are sourced under this paragraph. For purposes of this subdivision, "incidental" has the meaning given in s. 77.51 (5).

**(3)** LEASE OR RENTAL. (a) Except as provided in pars. (b) and (c), with regard to the first or only payment on the lease or rental, the lease or rental of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) is sourced to the location determined under sub. (1) (b). Subsequent periodic payments on the lease or rental are sourced to the property's, item's, or good's primary location as indicated by an address for the property, item, or good that is provided by the lessee and that is available to the lessor in records that the lessor maintains in the ordinary course of the lessor's business, if the use of such an address does not constitute bad faith. The location of a lease or rental as determined under this paragraph shall not be altered by any intermittent use of the property, item, or good at different locations.

(b) The lease or rental of motor vehicles, trailers, semitrailers, and aircraft, that are not transportation equipment, is sourced to the primary location of such motor vehicles, trailers, semitrailers, or aircraft as indicated by an address for the property that is provided by the lessee and that is available to the lessor in records that the lessor maintains in the ordinary course of the lessor's business, if the use of such an address does not constitute bad faith, except that a lease or rental under this paragraph that requires only one payment is sourced to the location determined under sub. (1) (b). The location of a lease or rental as determined under this paragraph shall not be altered by any intermittent use of the property at different locations.

(c) The lease or rental of transportation equipment is sourced to the location determined under sub. (1) (b).

(d) A license of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) shall be treated as a lease or rental of such tangible personal property, items, property, or goods under this subsection.

**(4)** TELECOMMUNICATIONS. (a) In this subsection:

1. "Air−to−ground radiotelephone service" means a radio service in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

2. "Call−by−call basis" means any method of charging for telecommunications services by which the price of such services is measured by individual calls.

3. "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

4. "Customer" means a person who enters into a contract with a seller of telecommunications services or, in any transaction for which the end user is not the person who entered into a contract with the seller of telecommunications services, the end user of the telecommunications services. "Customer" does not include a person who resells telecommunications services or, for mobile telecommunications services, a serving carrier under an agreement to serve a customer outside the home service provider's licensed service area.

5. "Customer channel termination point" means the location where a customer inputs or receives communications.

6. "End user" means the person who uses a telecommunications service. In the case of an entity, "end user" means the individual who uses the telecommunications service on the entity's behalf.

7. "Home service provider" means a home service provider under section 124 (5) of P.L. 106−252.

8. "Mobile telecommunications service" means a mobile telecommunications service under 4 USC 116 to 126, as amended by P.L. 106−252.

9. "Place of primary use" means the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use"

means a street address within the licensed service area of the home service provider.

10. "Postpaid calling service" means a telecommunications service that is obtained by paying for it on a call−by−call basis using a bankcard, travel card, credit card, debit card, or similar method, or by charging it to a telephone number that is not associated with the location where the telecommunications service originates or terminates. "Postpaid calling service" includes a telecommunications service, not including a prepaid wireless calling service, that would otherwise be a prepaid calling service except that the service provided to the customer is not exclusively a telecommunications service.

14. "Radio service" means a communication service provided by the use of radio, including radiotelephone, radiotelegraph, paging, and facsimile service.

15. "Radiotelegraph service" means transmitting messages from one place to another by means of radio.

16. "Radiotelephone service" means transmitting sound from one place to another by means of radio.

(b) Except as provided in pars. (d) to (j), the sale of a telecommunications service that is sold on a call−by−call basis is sourced to the taxing jurisdiction for sales and use tax purposes where the call originates and terminates, in the case of a call that originates and terminates in the same such jurisdiction, or the taxing jurisdiction for sales and use tax purposes where the call originates or terminates and where the service address is located.

(c) Except as provided in pars. (d) to (j), the sale of a telecommunications service that is sold on a basis other than a call−by−call basis is sourced to the customer's place of primary use.

(d) The sale of a mobile telecommunications service, except an air−to−ground radiotelephone service and a prepaid calling service, is sourced to the customer's place of primary use.

(e) The sale of a postpaid calling service is sourced to the location where the signal of the telecommunications service originates, as first identified by the seller's telecommunications system or, if the signal is not transmitted by the seller's telecommunications system, by information that the seller received from the seller's service provider.

(f) The sale of a prepaid calling service or a prepaid wireless calling service is sourced to the location determined under sub. (1) (b), except that, if the service is a prepaid wireless calling service and the location cannot be determined under sub. (1) (b) 1. to 4., the prepaid wireless calling service occurs at the location determined under sub. (1) (b) 5. c. or at the location associated with the mobile telephone number, as determined by the seller.

(g) 1. The sale of a private communication service for a separate charge related to a customer channel termination point is sourced to the location of the customer channel termination point.

2. The sale of a private communication service in which all customer channel termination points are located entirely in one taxing jurisdiction for sales and use tax purposes is sourced to the taxing jurisdiction in which the customer channel termination points are located.

3. If the segments are charged separately, the sale of a private communication service that represents segments of a communications channel between 2 customer channel termination points that are located in different taxing jurisdictions for sales and use tax purposes is sourced to an equal percentage in both such jurisdictions.

4. If the segments are not charged separately, the sale of a private communication service for segments of a communications channel that is located in more than one taxing jurisdiction for sales and use tax purposes is sourced to each such jurisdiction in a percentage determined by dividing the number of customer channel termination points in that jurisdiction by the number of customer channel termination points in all jurisdictions where segments of the communications channel are located.

(h) The sale of an Internet access service is sourced to the customer's place of primary use.

(i) The sale of an ancillary service is sourced to the customer's place of primary use.

(j) If the location of the customer's service address, channel termination point, or place of primary use is not known, the location where the seller receives or hands off the signal shall be considered, for purposes of this section, the customer's service address, channel termination point, or place of primary use.

**(5)** FLORISTS. (a) For purposes of this subsection, "retail florist" means a person engaged in the business of selling cut flowers, floral arrangements, and potted plants and who prepares such flowers, floral arrangements, and potted plants. "Retail florist" does not include a person who sells cut flowers, floral arrangements, and potted plants primarily by mail or via the Internet.

(b) Sales by a retail florist are sourced to the location determined by rule by the department.

**History:** 2009 a. 2, 28, 276, 330; 2013 a. 20.

**77.524 Seller and 3rd−party liability. (1)** In this section:

(ag) "Agent" means a person appointed by a seller to represent the seller before the states that are signatories to the agreement, as defined in s. 77.65 (2) (a).

(am) "Certified automated system" means software that is certified jointly by the states that are signatories to the agreement, as defined in s. 77.65 (2) (a), and that is used to calculate the sales tax and use tax imposed under this subchapter and subch. V on a transaction by each appropriate jurisdiction, to determine the amount of tax to remit to the appropriate state, and to maintain a record of the transaction.

(c) "Seller" has the meaning given in s. 77.65 (2) (e).

**(1g)** "Certified service provider" means an agent that is certified jointly by the states that are signatories to the agreement, as defined in s. 77.65 (2) (a), and that performs all of a seller's sales tax and use tax functions related to the seller's retail sales, except that a certified service provider is not responsible for a retailer's obligation to remit tax on the retailer's own purchases.

**(2)** A certified service provider is the agent of the seller with whom the certified service provider has contracted and is liable for the sales and use taxes that are due the state on all sales transactions that the provider processes for a seller, except as provided in sub. (3).

**(3)** A seller that contracts with a certified service provider is not liable for sales and use taxes that are due the state on transactions that the provider processed, unless the seller has misrepresented the type of items that the seller sells or has committed fraud. The seller is subject to an audit on transactions that the certified service provider processed only if there is probable cause to believe that the seller has committed fraud or made a material misrepresentation. The seller is subject to an audit on transactions that the certified service provider does not process. The states that are signatories to the agreement, as defined in s. 77.65 (2) (a), may jointly check the seller's business system and review the seller's business procedures to determine if the certified service provider's system is functioning properly and to determine the extent to which the seller's transactions are being processed by the certified service provider.

**(4)** A person that provides a certified automated system is responsible for the system's proper functioning and is liable to this state for tax underpayments that are attributable to errors in the system's functioning. A seller that uses a certified automated system is responsible and liable to this state for reporting and remitting sales and use tax.

**(5)** A seller that has a proprietary system for determining the amount of tax that is due on transactions and that has signed an agreement with the states that are signatories to the agreement, as defined in s. 77.65 (2) (a), establishing a performance standard for

the system is liable for the system's failure to meet the performance standard.

**History:** 2001 a. 16; 2003 a. 321; 2009 a. 2.

**77.525 Reduction to prevent double taxation.** Any person who is subject to the tax under s. 77.52 (2) (a) 5. on telecommunications services that terminate in this state and who has paid a similar tax on the same services to another state may reduce the amount of the tax remitted to this state by an amount equal to the similar tax properly paid to another state on those services or by the amount due this state on those services, whichever is less. That person shall refund proportionally to the persons to whom the tax under s. 77.52 (2) (a) 5. was passed on an amount equal to the amounts not remitted.

**History:** 1997 a. 27; 2001 a. 109; 2009 a. 2.

**77.53 Imposition of use tax. (1)** Except as provided in sub. (1m), an excise tax is levied and imposed on the use or consumption in this state of taxable services under s. 77.52 purchased from any retailer, at the rate of 5 percent of the purchase price of those services; on the storage, use or other consumption in this state of tangible personal property and items or property under s. 77.52 (1) (b) or (c) purchased from any retailer, at the rate of 5 percent of the purchase price of the property or items; on the storage, use, or other consumption of goods in this state under s. 77.52 (1) (d) purchased from any retailer, if the purchaser has the right to use the goods on a permanent or less than permanent basis and regardless of whether the purchaser is required to make continued payments for such right, at the rate of 5 percent of the purchase price of the goods; and on the storage, use or other consumption of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) manufactured, processed or otherwise altered, in or outside this state, by the person who stores, uses or consumes it, from material purchased from any retailer, at the rate of 5 percent of the purchase price of that material.

**(1b)** The storage, use, or other consumption in this state of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), and the use or other consumption in this state of a taxable service, purchased from any retailer is subject to the tax imposed in this section unless an exemption in this subchapter applies.

**(1m)** For motor vehicles that are used for a purpose in addition to retention, demonstration or display while held for sale in the regular course of business by a dealer who is licensed under ss. 218.0101 to 218.0163, the base for the tax imposed under sub. (1) is the following:

(a) If the motor vehicle is assigned to and used by an employee of the dealer for whom the dealer is required to withhold amounts for federal income tax purposes or by a person who both has an ownership interest in the dealership and actively participates in the day−to−day operation of the dealership, $96 per month for each motor vehicle registration plate held by the dealer, except that beginning in 1997 the department shall annually, as of January 1, adjust the dollar amount under this paragraph, rounded to the nearest whole dollar, to reflect the annual percentage change in the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, for the 12 months ending on June 30 of the year before the change. In this paragraph, "actively participates" means performs services for the motor vehicle dealership; including selling, accounting, managing and consulting; for more than 500 hours in a taxable year for which the person receives compensation, and "actively participates" does not include services performed only in the capacity of an investor; including studying and reviewing financial statements or reports on the operation of the business, preparing or compiling summaries or analyses of the finances of the business for the investor's own use or monitoring the finances or operations of the activity in a nonmanagerial capacity.

(b) If the motor vehicle is used by the dealer or any person other than an employee of the dealer, the lease value as shown in the lease value tables that the internal revenue service prepares to interpret section 61 of the internal revenue code.

**(2)** Every person storing, using, or otherwise consuming in this state tangible personal property, or items, property, or goods specified under s. 77.52 (1) (b), (c), or (d), or taxable services purchased from a retailer is liable for the tax imposed by this section. The person's liability is not extinguished until the tax has been paid to this state, but a receipt with the tax separately stated from a retailer engaged in business in this state or from a retailer who is authorized by the department, under such rules as it prescribes, to collect the tax and who is regarded as a retailer engaged in business in this state for purposes of the tax imposed by this section given to the purchaser under sub. (3) relieves the purchaser from further liability for the tax to which the receipt refers.

**(3)** Every retailer engaged in business in this state and making sales of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services that are sourced to this state under s. 77.522, shall, at the time of making the sales, collect the tax from the purchaser and give to the purchaser a receipt in the manner and form prescribed by the department.

**(5)** The tax required to be collected by the retailer constitutes a debt owed by the retailer to the state.

**(7)** The tax required to be collected by the retailer from the purchaser shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check, invoice or other proof of sale.

**(8)** Any person violating sub. (3) or (7) is guilty of a misdemeanor.

**(9)** (a) Except as provided in par. (b), every retailer selling tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services for storage, use or other consumption in this state shall register with the department and obtain a certificate under s. 73.03 (50) and give the name and address of all agents operating in this state, the location of all distribution or sales houses or offices or other places of business in this state, the standard industrial code classification of each place of business in this state and the other information that the department requires. Any person who may register under this subsection may designate an agent, as defined in s. 77.524 (1) (ag), to register with the department under this subsection, in the manner prescribed by the department.

(b) An out−of−state business, as defined in s. 323.12 (5) (a) 6., performing disaster relief work, as defined in s. 323.12 (5) (a) 3., is not required to register with the department under par. (a) and is not required to obtain a certificate under s. 73.03 (50) for sales made during the disaster period, as defined in s. 323.12 (5) (a) 2.

**(9m)** (a) Any person who is not otherwise required to collect any tax imposed by this subchapter and who makes sales to persons within this state of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services the use of which is subject to tax under this subchapter may register with the department under the terms and conditions that the department imposes and shall obtain a valid certificate under s. 73.03 (50) and thereby be authorized and required to collect, report, and remit to the department the use tax imposed by this subchapter.

(b) Any person who may register under par. (a) may designate an agent, as defined in s. 77.524 (1) (ag), to register with the department under par. (a), in the manner prescribed by the department.

(c) The registration under par. (a) by a person who is not otherwise required to collect any tax imposed by this subchapter shall not be used as a factor in determining whether the seller has nexus with this state for any tax at any time.

**(10)** For the purpose of the proper administration of this section and to prevent evasion of the use tax and the duty to collect the use tax, it is presumed that tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable ser-

vices sold by any person for delivery in this state is sold for storage, use, or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless that person takes from the purchaser an electronic or paper certificate, in a manner prescribed by department, to the effect that the property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable service is purchased for resale, or otherwise exempt from the tax, except that no certificate is required for the sale of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services that are exempt under s. 77.54 (7), (7m), (8), (10), (11), (14), (15), (17), (20n), (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46), (51), and (52).

**(11)** (a) The certificate under sub. (10) relieves the person selling the property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or service of the tax otherwise applicable only if the seller obtains a fully completed exemption certificate, or the information required to prove the exemption, from the purchaser no later than 90 days after the date of the sale of the tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable service, except as provided in par. (b). The certificate under sub. (10) shall not relieve the seller of the tax otherwise applicable if the seller fraudulently fails to collect sales tax or solicits the purchaser to claim an unlawful exemption, or accepts an exemption certificate from a purchaser who claims to be an entity that is not subject to the taxes imposed under this subchapter, if the subject of the transaction sought to be covered by the exemption certificate is received by the purchaser at a location operated by the seller in this state and the exemption certificate clearly and affirmatively indicates that the claimed exemption is not available in this state. The certificate shall provide information that identifies the purchaser and shall indicate the basis for the claimed exemption and a paper certificate shall be signed by the purchaser. The certificate shall be substantially in the form that the department prescribes by rule.

(b) 1. If the seller has not obtained a fully completed exemption certificate or the information required to prove the exemption, as provided in par. (a), the seller may, no later than 120 days after the department requests that the seller substantiate the exemption, either provide proof of the exemption to the department by other means or obtain, in good faith, a fully completed exemption certificate from the purchaser.

2. An exemption certificate is received by the seller in good faith if the certificate claims an exemption for which all of the following apply:

a. It was an exemption authorized by law on the date of the transaction in the jurisdiction where the transaction is sourced.

b. It could be applicable to the property, item, good, or service being purchased.

c. It is reasonable for the purchaser's type of business.

3. If the seller obtains the information described in subd. 2., the seller is relieved of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge, or had reason to know, at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction. In order to enforce this subdivision, the state must establish that the seller had knowledge, or had reason to know, at the time the information was provided that the information was materially false.

**(12)** If a purchaser who gives a certificate makes any storage or use of the property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or service other than retention, demonstration, or display while holding it for sale in the regular course of operations as a seller, the storage or use is taxable as of the time the property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or service is first so stored or used.

**(13)** If a purchaser gives a certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

**(14)** It is presumed that tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services shipped or brought to this state by the purchaser were purchased from or serviced by a retailer.

**(16)** If the purchase, rental or lease of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or service subject to the tax imposed by this section was subject to a sales tax by another state in which the purchase was made, the amount of sales tax paid the other state shall be applied as a credit against and deducted from the tax, to the extent thereof, imposed by this section, except no credit may be applied against and deducted from a sales tax paid on the purchase of advertising and promotional direct mail, if the advertising and promotional direct mail purchaser did not provide to the seller a direct pay permit, an exemption certificate claiming advertising and promotional direct mail, or other information that indicates the appropriate taxing jurisdiction to which the advertising and promotional direct mail is delivered to the ultimate recipients. In this subsection "sales tax" includes a use or excise tax imposed on the use of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable service by the state to which the sale was sourced and "state" includes the District of Columbia and the commonwealth of Puerto Rico but does not include the several territories organized by congress.

**(16m)** If the purchase, rental, license, or lease of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or service subject to the tax imposed by this section was sourced to tribal lands and, prior to imposing the tax under this subchapter, was subject to a sales tax by a federally recognized American Indian tribe or band in this state, the amount of sales tax paid to the tribe or band may, as determined by an agreement between the department and the tribal council under s. 73.03 (65), be applied as a credit against and deducted from the tax, to the extent thereof, imposed by this section. In this subsection "sales tax" includes a use or excise tax imposed on the use of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable service by the tribe or band.

**(17)** This section does not apply to tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) purchased outside this state, as determined under s. 77.522, other than motor vehicles, boats, snowmobiles, recreational vehicles, as defined in s. 340.01 (48r), trailers, semitrailers, all−terrain vehicles, utility terrain vehicles, and airplanes registered or titled or required to be registered or titled in this state, which is brought into this state by a nondomiciliary for the person's own storage, use or other consumption while temporarily within this state when such property, item, or good is not stored, used or otherwise consumed in this state in the conduct of a trade, occupation, business or profession or in the performance of personal services for wages or fees.

**(17m)** This section does not apply to a boat purchased in a state contiguous to this state, as determined under s. 77.522, by a person domiciled in that state if the boat is berthed in this state's boundary waters adjacent to the state of the domicile of the purchaser and if the transaction was an exempt occasional sale under the laws of the state in which the purchase was made.

**(17r)** This section does not apply to an aircraft if all of the following requirements are fulfilled:

(a) It is purchased in another state, as determined under s. 77.522.

(b) Its owner or lessee has paid all of the sales and use taxes imposed in respect to it by the state where it was purchased.

(c) If the owner or lessee is a corporation, that corporation, and all corporations with which that corporation may file a consolidated return for federal income tax purposes, neither is organized under the laws of this state nor has real property or other tangible personal property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft; in this state at the time the aircraft is registered in this state.

(d) If the owner or lessee is a partnership, all of the corporate partners fulfill the requirements under par. (c) and none of the general partners and none of the limited partners who has management or control responsibilities is domiciled in this state and the partnership has no other tangible personal property and no real property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft; in this state at the time the aircraft is registered in this state.

(dm) If the owner or lessee is a limited liability company, all of the corporate members fulfill the requirements under par. (c) and none of the managers and none of the members who has management or control responsibilities is domiciled in this state and the limited liability company has no other tangible personal property and no real property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft; in this state at the time the aircraft is registered in this state.

(e) If the owner or lessee is an individual, the owner or lessee is not domiciled in this state.

(f) If the owner or lessee is an estate, a trust, a cooperative, or an unincorporated cooperative association; that estate, that trust and its grantor or that cooperative or association does not have real property or other tangible personal property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft; in this state at the time the aircraft is registered in this state.

(g) The department has not determined that the owner, if the owner is a corporation, trust, partnership or limited liability company, was formed to qualify for the exception under this subsection.

**(18)** This section does not apply to the storage, use or other consumption in this state of household goods or items, property, or goods under s. 77.52 (1) (b), (c), or (d) for personal use or to aircraft, motor vehicles, boats, snowmobiles, mobile homes, manufactured homes, as defined in s. 101.91 (2), recreational vehicles, as defined in s. 340.01 (48r), trailers, semitrailers, all−terrain vehicles, and utility terrain vehicles, for personal use, purchased by a nondomiciliary of this state outside this state, as determined under s. 77.522, 90 days or more before bringing the goods, items, or property into this state in connection with a change of domicile to this state.

**(19)** This section does not apply to the storage, use, or other consumption in this state of tangible personal property, property, or goods under s. 77.52 (1) (a), (c), or (d), or taxable services, purchased outside this state, as determined under s. 77.522, by an out−of−state business, as defined in s. 323.12 (5) (a) 6., and brought into this state and used solely for disaster relief work, as defined in s. 323.12 (5) (a) 3.

**History:** 1971 c. 125, 211; 1977 c. 29, 418; 1979 c. 1, 174; 1981 c. 317; 1983 a. 2; 1985 a. 29; 1987 a. 27, 268, 399; 1991 a. 39, 316; 1993 a. 16, 112; 1995 a. 27, 209; 1997 a. 27, 41, 237; 1999 a. 31; 2001 a. 109; 2003 a. 321; 2005 a. 441; 2007 a. 11, 20; 2009 a. 2, 28, 276, 330; 2011 a. 208; 2013 a. 20; 2015 a. 84.

For a taxpayer to use tangible personal property for use tax purposes the taxpayer must own, possess, or enjoy the property and exercise some right or power over the property in Wisconsin. A taxpayer's purpose in entering into a transaction is not dispositive of whether the property is subject to use tax. The substance and realities of a taxpayer's activities are determinative. The exercise of a right or power over property encompasses financial or economic control as well as physical control. G & G Trucking, Inc. v. DOR, 2003 WI App 228, 267 Wis. 2d 847, 672 N.W.2d 80, 02−2648.

For the use tax to apply to intercompany transfers with wholly−owned subsidiaries, the subsidiaries that transferred the fixed assets must be considered "retailers" under s. 77.51 (13). It is not the case that Wisconsin has a statutory scheme that taxes all transfers of tangible personal property, unless an explicit exemption applies. When the person transferring tangible personal property lacks mercantile intent, he or she will not be subject to tax, even though no explicit exemption applies. Wisconsin Department of Revenue v. River City Refuse Removal, Inc. 2007 WI 27, 299 Wis. 2d 561, 729 N.W.2d 396, 04−2468.

**77.535 Increases; building materials.** Increases in the rates of the taxes under this subchapter do not apply to building materials purchased by persons engaged in constructing, altering, repairing or improving real estate for others when the materials so purchased by those persons are affixed and made a structural part of real estate in the fulfillment of a written contract for a fixed price not subject to change or modification, or to a formal written bid that cannot be altered or withdrawn, if the contract is entered into or the bid is made before the effective date of the sales and use tax rate increase.

**History:** 1981 c. 317.

**77.54 General exemptions.** There are exempted from the taxes imposed by this subchapter:

**(1)** The sales price from the sale of and the storage, use or other consumption in this state of tangible personal property, and items and property under s. 77.52 (1) (b) and (c), and services the sales price from the sale of which, or the storage, use or other consumption of which, this state is prohibited from taxing under the constitution or laws of the United States or under the constitution of this state.

**(2)** The sales price from the sales of and the storage, use, or other consumption of tangible personal property or item under s. 77.52 (1) (b) that is used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property or item or property under s. 77.52 (1) (b) or (c) that is destined for sale and that becomes an ingredient or component part of the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c) destined for sale or is consumed or destroyed or loses its identity in manufacturing the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c) destined for sale, except as provided in sub. (30) (a) 6.

**(2m)** The sales price from the sales of and the storage, use, or other consumption of tangible personal property or services that are used exclusively and directly by a manufacturer in manufacturing shoppers guides, newspapers, or periodicals and that become an ingredient or component of shoppers guides, newspapers, or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers, or periodicals, whether or not the shoppers guides, newspapers, or periodicals are transferred without charge to the recipient. In this subsection, "shoppers guides," "newspapers," and "periodicals" have the meanings under sub. (15). The exemption under this subsection does not apply to advertising supplements that are not newspapers.

**(3)** (a) The sales price from the sales of and the storage, use, or other consumption of tractors and machines, including accessories, attachments, and parts, lubricants, nonpowered equipment, and other tangible personal property, or items or property under s. 77.52 (1) (b) or (c), that are used exclusively and directly, or are consumed or lose their identities, in the business of farming, including dairy farming, agriculture, horticulture, floriculture, silviculture, and custom farming services, but excluding automobiles, trucks, and other motor vehicles for highway use; excluding personal property that is attached to, fastened to, connected to, or built into real property or that becomes an addition to, component of, or capital improvement of real property; and excluding tangible personal property, or items or property under s. 77.52 (1) (b) or (c), used or consumed in the erection of buildings or in the alteration, repair, or improvement of real property, regardless of any contribution that that personal property, or item or property under s. 77.52 (1) (b) or (c), makes to the production process in that building or real property and regardless of the extent to which that personal property, or item or property under s. 77.52 (1) (b) or (c), functions as a machine, except as provided in par. (c).

(b) In par. (a):

1. "Building" has the meaning given under s. 70.111 (10) (a) 1.

2. "Machine" means an assemblage of parts that transmits force, motion and energy from one part to another in a predetermined manner.

3. "Used exclusively" means used to the exclusion of all other uses except for other use not exceeding 5 percent of total use.

(c) For purposes of this subsection, the following items retain their character as tangible personal property, regardless of the extent to which they are fastened to, connected to or built into real property:

1. Auxiliary power generators.

2. Bale loaders.

3. Barn cleaners and elevators.

4. Conveyors.

5. Feed elevators and augers.

6. Grain dryers and grinders.

7. Milk coolers.

8. Milking machines; including piping, pipeline washers and compressors.

9. Powered feeders, excluding platforms and troughs constructed from ordinary building materials.

10. Silo unloaders.

**(3m)** The sales price from the sale of and the storage, use or other consumption of the following items if they are used exclusively by the purchaser or user in the business of farming; including dairy farming, agriculture, horticulture, floriculture, silviculture, and custom farming services:

(a) Seeds for planting.

(b) Plants.

(c) Feed.

(d) Fertilizer.

(e) Soil conditioners.

(f) Animal bedding.

(g) Sprays, pesticides and fungicides.

(h) Breeding and other livestock.

(i) Poultry.

(j) Farm work stock.

(k) Baling twine and baling wire.

(L) Containers for fruits, vegetables, grain, hay, silage and animal wastes.

(m) Plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage.

**(4)** The sales price from the sale of tangible personal property and items and property under s. 77.52 (1) (b) and (c) and the storage, use or other consumption in this state of tangible personal property and items and property under s. 77.52 (1) (b) and (c), which is the subject of any such sale, by any elementary school or secondary school, exempted as such from payment of income or franchise tax under ch. 71, whether public or private.

**(5)** The sales price from the sale of and the storage, use or other consumption of:

(a) 1. Aircraft, including accessories, attachments, and fuel for such aircraft, sold to persons using the aircraft as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government, or sold to any foreign government for use by such government outside this state.

2. Aircraft, including attachments for such aircraft, sold to persons who are not residents of this state and who will not use such aircraft in this state otherwise than in the removal of such aircraft from this state or in the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of such aircraft in this state.

3. Parts used to modify or repair aircraft.

4. Motor vehicles or truck bodies sold to persons who are not residents of this state and who will not use such motor vehicles or trucks for which the truck bodies were made in this state otherwise than in the removal of such motor vehicles or trucks from this state.

(am) Modular homes, as defined in s. 101.71 (6), and manufactured homes, as defined in s. 101.91 (2), that are used in real property construction activities outside this state.

(b) Motor trucks, truck tractors, road tractors, buses, trailers and semitrailers, and accessories, attachments, parts, supplies and materials therefor, sold to common or contract carriers who use such motor trucks, truck tractors, road tractors, buses, trailers and semitrailers exclusively as common or contract carriers, including the urban mass transportation of passengers as defined in s. 71.38.

(c) Motor vehicles which are not required to be licensed for highway use and which are exclusively and directly used in conjunction with waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. For the purposes of this paragraph, "solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semisolid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities.

(d) Mobile units used for mixing and processing and the motor vehicle or trailer on which the unit is mounted, including accessories, attachments, parts, supplies and materials for those vehicles, trailers and units.

**(6)** (am) The sales price from the sale of and the storage, use or other consumption of:

1. Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c) and safety attachments for those machines and equipment.

2. Containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping tangible personal property or items or property under s. 77.52 (1) (b) or (c), if the containers, labels, sacks, cans, boxes, drums, bags, or other packaging and shipping materials are used by the purchaser to transfer merchandise to customers.

2m. Meat casing, wrapping paper, tape, containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping meat or meat products regardless of whether such items are used to transfer merchandise to customers.

3. Fuel converted to electric energy, gas or steam by utilities and that portion of the amount of fuel converted to steam for purposes of resale by persons other than utilities.

4. Machines and specific processing equipment used exclusively and directly in a fertilizer blending, feed milling, or grain drying operation, including holding structures used for weighing and dropping feed or fertilizer ingredients into a mixer, wet corn holding bins, grain dryers, mixers, conveying equipment, and grinding, mixing, and saturation bins, regardless of whether such items become an addition to, a component of, or a capital improvement of real property. The exemption under this subdivision applies to repair parts, replacements, and safety attachments for such machines and equipment.

5. Building materials acquired solely for and used solely in the construction or repair of holding structures used for weighing and dropping feed or fertilizer ingredients into a mixer or for storage of grain, if such structures are used in a fertilizer blending, feed milling, or grain drying operation.

(bn) The exemptions under par. (am) 4. and 5. apply only to items located on the same parcel of property where the fertilizer blending, feed milling, or grain drying operation activities are conducted, or on an adjoining parcel, including parcels that are

separated only by a public road. The exemptions under par. (am) 4. and 5. apply only to persons who are primarily engaged in fertilizer blending, feed milling, or grain handling operations which include grain drying operations, or primarily engaged in any combination of fertilizer blending, feed milling, or grain handling operations which include grain drying operations, and to contractors providing real property construction activities to such persons.

(cn) The exemptions under this subsection shall be strictly construed.

**(7)** (a) Except as provided in pars. (b) to (d), the occasional sales of tangible personal property, items and property under s. 77.52 (1) (b) and (c), and services and the storage, use or other consumption in this state of tangible personal property and items and property under s. 77.52 (1) (b) and (c) the transfer of which to the purchaser is an occasional sale.

(b) If the item transferred is a motor vehicle, snowmobile, recreational vehicle, as defined in s. 340.01 (48r), trailer, semitrailer, all−terrain vehicle, utility terrain vehicle, or aircraft and the item is registered or titled, or required to be registered or titled, in this state or if the item is a boat that is registered or titled, or required to be registered or titled, in this state or under the laws of the United States, the exemption under par. (a) applies only if all of the following conditions are fulfilled:

1. The item is transferred to a child, spouse, parent, father−in−law, mother−in−law, daughter−in−law or son−in−law of the transferor or, if the item is a motor vehicle, from the transferor to a corporation owned solely by the transferor or by the transferor's spouse.

2. The item has been registered or titled in the name of the transferor.

3. The transferor is not engaged in the business of selling the type of item that is transferred.

(c) The exemption under par. (a) does not apply to the sale of bingo supplies to players or to the sale, rental or use of regular bingo cards, extra regular cards and special bingo cards.

(d) The exemption under par. (a) does not apply to sales by a nonprofit organization.

**(7m)** Occasional sales of tangible personal property, or items or property under s. 77.52 (1) (b) or (c), or services, including admissions or tickets to an event; by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization; not involving entertainment for which payment in the aggregate exceeds $10,000 for performing or as reimbursement of expenses unless access to the event may be obtained without payment of a direct or indirect admission fee; conducted by the organization if the organization is not engaged in a trade or business and is not required to have a seller's permit. For purposes of this subsection, an organization is engaged in a trade or business and is required to have a seller's permit if its sales of tangible personal property, and items, property, and goods under s. 77.52 (1) (b), (c), and (d), and services, not including sales of tickets to events, and its events occur on more than 75 days during the year, unless its taxable receipts do not exceed $50,000 during the year. The exemption under this subsection does not apply to the sales price from the sale of bingo supplies to players or to the sale, rental or use of regular bingo cards, extra regular cards and special bingo cards.

**(8)** Charges for insurance, not including contracts under s. 77.52 (2) (a) 13m., where such charges are separately set forth upon the invoice given by the seller to the purchaser.

**(9)** The sales price from sales of tickets or admissions to public and private elementary and secondary school activities, where the entire net proceeds therefrom are expended for educational, religious or charitable purposes.

**(9a)** The sales price from sales to, and the storage by, use by or other consumption of tangible personal property, and items and property under s. 77.52 (1) (b) and (c), and taxable services by:

(a) This state or any agency thereof, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Wisconsin Economic Development Corporation, and the Fox River Navigational System Authority.

(b) Any county, city, village, town or school district in this state.

(c) A county−city hospital established under s. 66.0927.

(d) A sewerage commission organized under s. 281.43 (4) or a metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65.

(e) Any other unit of government in this state or any agency or instrumentality of one or more units of government in this state.

(ed) Any federally recognized American Indian tribe or band in this state.

(em) Any joint local water authority created under s. 66.0823.

(f) Any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under s. 613.80 (2), no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation.

(g) A local exposition district under subch. II of ch. 229.

(h) A local cultural arts district under subch. V of ch. 229.

(i) A cemetery company or corporation described under section 501 (c) (13) of the Internal Revenue Code, if the tangible personal property or taxable services are used exclusively by the cemetery company or corporation for the purposes of the company or corporation.

**(9m)** The sales price from the sale of and the storage, use, or other consumption of tangible personal property, or items or property under s. 77.52 (1) (b) or (c), sold to a construction contractor who, in fulfillment of a real property construction activity, transfers the tangible personal property, or items or property under s. 77.52 (1) (b) or (c), to an entity described under sub. (9a) (b), (c), (d), (em), or (f), if such tangible personal property, or items or property, becomes a component of a facility in this state that is owned by the entity. In this subsection, "facility" means any building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, water supply system, or sewerage and waste water treatment facility, but does not include a highway, street, or road.

**(10)** The sales price from the sale of all admission fees, admission stickers or camping fees under s. 27.01 (7) to (11) and all admission fees to any museum operated by a nonprofit corporation under a lease agreement with the state historical society.

**(11)** The sales price from the sales of and the storage, use or other consumption in this state of motor vehicle fuel, general aviation fuel or alternate fuel, subject to taxation under ch. 78, unless the motor vehicle fuel or alternate fuel tax is refunded under s. 78.75 because the buyer does not use the fuel in operating a motor vehicle upon the public highways.

**(11m)** The sales price from the sales of and the storage, use, or other consumption of vegetable oil or animal fat that is converted into motor vehicle fuel that is exempt under s. 78.01 (2n) from the taxes imposed under s. 78.01 (1).

**(12)** The sales price from the sales of and the storage, use or other consumption in this state of rail freight or passenger cars, locomotives or other rolling stock used in railroad operations, or accessories, attachments, parts, lubricants or fuel therefor.

**(13)** The sales price from the sales of and the storage, use or other consumption in this state of commercial vessels and barges of 50−ton burden or over primarily engaged in interstate or foreign commerce or commercial fishing, and the accessories, attachments, parts and fuel therefor.

**(14)** The sales price from the sales of and the storage, use, or other consumption in this state of drugs that are any of the following:

(a) Prescribed for the treatment of a human being by a person authorized to prescribe the drugs, and dispensed on prescription filled by a registered pharmacist in accordance with law.

(b) Furnished by a licensed physician, surgeon, podiatrist, or dentist to a patient who is a human being for treatment of the patient.

(c) Furnished by a hospital for treatment of any person pursuant to the order of a licensed physician, surgeon, podiatrist, or dentist.

(d) Sold to a licensed physician, surgeon, podiatrist, dentist, or hospital for the treatment of a human being.

(e) Sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being.

(em) Furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof.

(f) Furnished without charge to any of the following if the drug may not be dispensed without a prescription:

1. A physician.
2. A surgeon.
3. A nurse anesthetist.
4. An advanced practice nurse.
5. An osteopath.
6. A dentist who is licensed under ch. 447.
7. A podiatrist who is licensed under ch. 448.
8. An optometrist who is licensed under ch. 449.

**(14m)** For purposes of sub. (14), insulin furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed dispensed on prescription.

**(14r)** For purposes of sub. (14) hospital has the meaning ascribed to it in s. 50.33 (2).

**(15)** The sales price from the sale of and the storage, use or other consumption of all newspapers, of periodicals sold by subscription and regularly issued at average intervals not exceeding 3 months, or issued at average intervals not exceeding 6 months by an educational association or corporation sales to which are exempt under sub. (9a) (f), of controlled circulation publications sold to commercial publishers for distribution without charge or mainly without charge or regularly distributed by or on behalf of publishers without charge or mainly without charge to the recipient and of shoppers guides which distribute no less than 48 issues in a 12−month period. In this subsection, "shoppers guide" means a community publication delivered, or attempted to be delivered, to most of the households in its coverage area without a required subscription fee, which advertises a broad range of products and services offered by several types of businesses and individuals. In this subsection, "controlled circulation publication" means a publication that has at least 24 pages, is issued at regular intervals not exceeding 3 months, that devotes not more than 75 percent of its pages to advertising and that is not conducted as an auxiliary to, and essentially for the advancement of, the main business or calling of the person that owns and controls it.

**(16)** The sales price from the sale of and the storage, use or other consumption of fire trucks and fire fighting equipment, including accessories, attachments, parts and supplies therefor, sold to volunteer fire departments.

**(17)** The sales price from the sales of and the storage, use or other consumption of water, that is not food and food ingredient, when delivered through mains.

**(18)** When the sale of a service or tangible personal property, or items, property, and goods under s. 77.52 (1) (b), (c), and (d), that was previously exempt or not taxable under this subchapter becomes taxable, and the service or tangible personal property, or item, property, or good under s. 77.52 (1) (b), (c), or (d) is furnished under a written contract by which the seller is unconditionally obligated to provide the service or tangible personal property, or item, property, or good under s. 77.52 (1) (b), (c), or (d) for the amount fixed under the contract, the seller is exempt from sales or use tax on the sales price for services or tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d) provided until the contract is terminated, extended, renewed or modified. However, from the time the service or tangible personal property, or item, property, or good under s. 77.52 (1) (b), (c), or (d) becomes taxable until the contract is terminated, extended, renewed or modified the user is subject to use tax, measured by the purchase price, on the service or tangible personal property, or item, property, or good under s. 77.52 (1) (b), (c), or (d) purchased under the contract.

**(20n)** (a) The sales price from the sale of and the storage, use, or other consumption of food and food ingredients, except candy, soft drinks, dietary supplements, and prepared food.

(b) The sales price from the sale of and the storage, use, or other consumption of food and food ingredients, except soft drinks, sold by hospitals, sanatoriums, nursing homes, retirement homes, and community−based residential facilities, as defined in s. 50.01 (1g), and any facility certified or licensed under ch. 48, including prepared food that is sold to the elderly or handicapped by persons providing mobile meals on wheels. In this paragraph, "retirement home" means a nonprofit residential facility where 3 or more unrelated adults or their spouses have their principal residence and where support services, including meals from a common kitchen, are available to residents.

(c) The sales price from the sale of and the storage, use, or other consumption of food and food ingredients, furnished in accordance with any contract or agreement or paid for to such institution through the use of an account of such institution, by a public or private institution of higher education to any of the following:

1. An undergraduate student, a graduate student, or a student enrolled in a professional school if the student is enrolled for credit at the public or private institution of higher education and if the food and food ingredients are consumed by the student.

2. A national football league team.

**(20r)** The sales price from the sales of and the storage, use, or other consumption of candy, soft drinks, dietary supplements, and prepared foods, and disposable products that are transferred with such items, furnished for no consideration by a restaurant to the restaurant's employee during the employee's work hours.

**(21)** The sales price from the sales of and the storage, use or other consumption of caskets and burial vaults for human remains.

**(22b)** The sales price from the sale of and the storage, use, or other consumption of durable medical equipment that is for use in a person's home, mobility−enhancing equipment, and prosthetic devices, and accessories for such equipment or devices, if the equipment or devices are used for a human being.

**(23m)** The sales price from the sale of or the storage, use or other consumption of motion picture film or tape, and motion pictures or radio or television programs for listening, viewing, or broadcast, and advertising materials related thereto, sold to a motion picture theater or radio or television station.

**(23n)** The sales price from the sales of tangible personal property and property under s. 77.52 (1) (c) to, and the storage, use, or other consumption of tangible personal property and property under s. 77.52 (1) (c) by, a person who is licensed to operate a commercial radio or television station in this state, if the tangible personal property or property under s. 77.52 (1) (c) is used exclusively and directly in, or is fuel or electricity consumed in, the origination or integration of various sources of program material for commercial radio or television transmissions that are generally available to the public free of charge without a subscription or service agreement. This subsection applies to vehicles licensed for highway use and equipment used to transmit or receive signals from a satellite.

**(25)** The sales price from the sale of and the storage of printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which printed material is purchased and stored for the purpose of subsequently transporting it outside the state by the purchaser for use thereafter solely outside the state. This subsection does not apply to catalogs and the envelopes in which the catalogs are mailed.

**(25m)** The sales price from the sale of and the storage, use, or other consumption of catalogs, and the envelopes in which the catalogs are mailed, that are designed to advertise and promote the sale of merchandise or to advertise the services of individual business firms.

**(26)** The sales price from the sales of and the storage, use, or other consumption of tangible personal property and items and property under s. 77.52 (1) (b) and (c) which becomes a component part of an industrial waste treatment facility that is exempt under s. 70.11 (21) or that would be exempt under s. 70.11 (21) if the property were taxable under ch. 70, or tangible personal property and items and property under s. 77.52 (1) (b) and (c) which becomes a component part of a waste treatment facility of this state or any agency thereof, or any political subdivision of the state or agency thereof as provided in s. 40.02 (28). The exemption includes replacement parts therefor, and also applies to chemicals and supplies used or consumed in operating a waste treatment facility and to purchases of tangible personal property and items and property under s. 77.52 (1) (b) and (c) made by construction contractors who transfer such property to their customers in fulfillment of a real property construction activity. This exemption does not apply to tangible personal property and items and property under s. 77.52 (1) (b) and (c) installed in fulfillment of a written construction contract entered into, or a formal written bid made, prior to July 31, 1975.

**(26m)** The sales price from the sale of and the storage, use or other consumption of waste reduction or recycling machinery and equipment, including parts therefor, exclusively and directly used for waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. The exemption applies even though an economically useful end product results from the use of the machinery and equipment. For the purposes of this subsection, "solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semisolid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities.

**(27)** The sales price from the sale of semen used for artificial insemination of livestock.

**(28)** The sales price from the sale of and the storage, use or other consumption to or by the ultimate consumer of supplies used to determine blood sugar level.

**(29)** The sales price from the sales of and the storage, use or other consumption of equipment used in the production of maple syrup.

**(30)** (a) The sales price from the sale of:

1. Coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel sold for residential use.

1m. Biomass, as defined in s. 196.378 (1) (ar), that is used for fuel sold for residential use.

2. Electricity and natural gas sold during the months of November, December, January, February, March and April for residential use.

3. Electricity sold for use in farming, including but not limited to agriculture, dairy farming, floriculture, silviculture, and horticulture.

4. Any residue that is used as fuel in a business activity and that results from the harvesting of timber or the production of wood products, including slash, sawdust, shavings, edgings, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or primarily from wood residue.

5. Fuel sold for use in farming, including but not limited to agriculture, dairy farming, floriculture, silviculture, and horticulture.

6. Fuel and electricity consumed in manufacturing tangible personal property, or items or property under s. 77.52 (1) (b) or (c), in this state.

7. Fuel sold for use in motorboats that are regularly employed in carrying persons for hire for sport fishing in and upon the outlying waters, as defined in s. 29.001 (63), and the rivers and tributaries specified in s. 29.2285 (2) (a) 1. and 2., if the owner and all operators are licensed under s. 29.514 to operate the boat for that purpose.

(b) For purposes of this subsection, electricity or natural gas is considered sold at the time of billing. If the billing is by mail, the time of billing is the day on which the billing is mailed.

(c) If fuel or electricity is sold partly for a use exempt under this subsection and partly for a use which is not exempt under this subsection, no tax shall be collected on that percentage of the sales price equal to the percentage of the fuel or electricity which is used for an exempt use, as specified in an exemption certificate provided by the purchaser to the seller.

(d) In this subsection "residential use" means use in a structure or portion of a structure which is a person's permanent residence, but does not include use in transient accommodations, as specified in s. 77.52 (2) (a) 1., motor homes, travel trailers or other recreational vehicles.

(e) For purposes of this subsection, a seller of electricity or natural gas is not required to comply with the requirement of obtaining exemption certificates under s. 77.52 (13) for sales of electricity or natural gas to accounts not covered by par. (c) which are properly classified as residential or farms pursuant to schedules which are filed for rate tariff purposes with the public service commission under s. 196.19 and which are in force at the time of the sales or are properly so classified for classification purposes as directed by the federal rural electrification administration. Nothing in this paragraph shall be construed to broaden the exemption specified in par. (a).

(f) Sellers of coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel shall not be required to obtain an exemption certificate under s. 77.52 (13) from a purchaser if all the fuel sold is for residential use and the seller maintains adequate records to identify which sales are exempt.

**(31)** The sales price from the sale of and the storage, use or other consumption in this state, but not the lease or rental, of used mobile homes, as defined in s. 101.91 (10), and used manufactured homes, as defined in s. 101.91 (12).

**(32)** The sales price from charges, including charges for a search, imposed by an authority, as defined in s. 19.32 (1), for copies of a public record that a person may examine and use under s. 16.61 (12) or for copies of a record under s. 19.35 (1).

**(33)** The sales price from sales of and the storage, use or other consumption of drugs used on farm livestock, not including workstock.

**(35)** The sales price from the sales of tangible personal property, or items or property under s. 77.52 (1) (b) or (c), tickets, or admissions by any baseball team affiliated with the Wisconsin Department of American Legion baseball.

**(36)** The sales price from the rental for a continuous period of one month or more of a mobile home, as defined in s. 101.91 (10), or a manufactured home, as defined in s. 101.91 (2), that is used as a residence. In this subsection, "one month" means a calendar month or 30 days, whichever is less, counting the first day of the rental and not counting the last day of the rental.

**(37)** The sales price from revenues collected under s. 256.35 (3) and the surcharge established by rule by the public service

commission under s. 256.35 (3m) (f) for customers of wireless providers, as defined in s. 256.35 (3m) (a) 6.

**(38)** The sales price from the sale of and the storage, use or other consumption of snowmobile trail groomers and attachments for them that are purchased, stored, used or consumed by a snowmobile club that meets at least 3 times a year, that has at least 10 members, that promotes snowmobiling and that participates in the department of natural resources' snowmobile program under s. 350.12 (4) (b).

**(39)** The sales price from the sale of and the storage, use or other consumption of off−highway, heavy mechanical equipment such as feller bunchers, slashers, delimbers, chippers, hydraulic loaders, loaders, skidder−forwarders, skidders, timber wagons and tractors used exclusively and directly in the harvesting or processing of raw timber products in the field by a person in the logging business. In this subsection, "heavy mechanical equipment" does not include hand tools such as axes, chains, chain saws and wedges.

**(41)** The sales price from the sale of building materials, supplies and equipment to; and the storage, use or other consumption of those kinds of property by; owners, contractors, subcontractors or builders if that property is acquired solely for or used solely in, the construction, renovation or development of property that would be exempt under s. 70.11 (36).

**(42)** The sales price from the sale of and the storage, use or other consumption of animal identification tags provided under s. 93.06 (1h) and standard samples provided under s. 93.06 (1s).

**(43)** The sales price from the sale of and the storage, use or other consumption of raw materials used for the processing, fabricating or manufacturing of, or the attaching to or incorporating into, printed materials that are transported and used solely outside this state.

**(44)** The sales price from the collection of low−income assistance fees that are charged under s. 16.957 (4) (a) or (5) (a).

**(45)** The sales price from the sale of and the use or other consumption of a onetime license or similar right to purchase admission to professional football games at a football stadium, as defined in s. 229.821 (6), that is granted by a municipality; a local professional football stadium district; or a professional football team or related party, as defined in s. 229.821 (12); if the person who buys the license or right is entitled, at the time the license or right is transferred to the person, to purchase admission to at least 3 professional football games in this state during one football season.

**(46)** The sales price from the sale of and the storage, use, or other consumption of the U.S. flag or the state flag. This subsection does not apply to a representation of the U.S. flag or the state flag.

**(46m)** The sales price from the sale of and the storage, use, or other consumption of telecommunications services, if the telecommunications services are obtained by using the rights to purchase telecommunications services, including purchasing reauthorization numbers, by paying in advance and by using an access number and authorization code; and if the tax imposed under s. 77.52 or 77.53 was previously paid on the sale or purchase of such rights.

**(47)** The sales price from the sale of and the storage, use, or other consumption of all of the following:

(a) Live game birds and clay pigeons that are sold to bird hunting preserves licensed under s. 169.19.

(b) Clay pigeons that are sold to a shooting facility, if any of the following applies:

1. The shooting facility is required to pay the tax imposed under s. 77.52 on the sales price from charges for shooting at the facility.

2. The shooting facility is a nonprofit organization that charges for shooting at the facility, but is not required to pay the tax imposed under s. 77.52 on its sales price from such charges because the charges are for occasional sales, as provided under sub. (7m), or because the charges satisfy the exemption under s. 77.52 (2) (a) 2. b.

**(49)** The sales price from the sale of and the storage, use, or other consumption of taxable services and tangible personal property or items or property under s. 77.52 (1) (b) or (c), that are physically transferred to the purchaser as a necessary part of services that are subject to the taxes imposed under s. 77.52 (2) (a) 7., 10., 11., and 20., if the seller and the purchaser of such services and property or item are members of the same affiliated group under section 1504 of the Internal Revenue Code and are eligible to file a single consolidated return for federal income tax purposes. For purposes of this subsection, if a seller purchases a taxable service, or item or property under s. 77.52 (1) (b) or (c), or tangible personal property, as described in this subsection, that is subsequently sold to a member of the seller's affiliated group and the sale is exempt under this subsection from the taxes imposed under this subchapter, the original purchase of the taxable service, or item or property under s. 77.52 (1) (b) or (c), or tangible personal property by the seller is not considered a sale for resale or exempt under this subsection.

**(50)** The sales price from the sale of and the storage, use, or other consumption of specified digital goods or additional digital goods, if the sale of and the storage, use, or other consumption of such goods sold in a tangible form is exempt from, or not subject to, taxation under this subchapter.

**(51)** The sales price from the sales of and the storage, use, or other consumption of products sold in a transaction that would be a bundled transaction, except that it contains taxable and nontaxable products as described in s. 77.51 (1f) (d), and except that the first person combining the products shall pay the tax imposed under this subchapter on the person's purchase price of the taxable items.

**(52)** The sales price from the sales of and the storage, use, or other consumption of products sold in a transaction that would be a bundled transaction, except that the transaction meets the conditions described in s. 77.51 (1f) (e).

**(54)** The sales price from the sale of and the storage, use, or other consumption of tangible personal property, and items and property under s. 77.52 (1) (b) and (c), and taxable services that are sold by a home exchange service that receives moneys from the appropriation account under s. 20.485 (1) (g) and is operated by the department of veterans affairs.

**(55)** The sales price from the police and fire protection fee imposed under s. 196.025 (6).

**(56)** (a) Beginning July 1, 2011, the sales price from the sale of and the storage, use, or other consumption of a product whose power source is wind energy, direct radiant energy received from the sun, or gas generated from anaerobic digestion of animal manure and other agricultural waste, if the product produces at least 200 watts of alternating current or 600 British thermal units per day, except that the exemption under this subsection does not apply to an uninterruptible power source that is designed primarily for computers.

(b) Except for the sale of electricity or energy that is exempt from taxation under sub. (30), beginning on July 1, 2011, the sales price from the sale of and the storage, use, or other consumption of electricity or energy produced by a product described under par. (a).

**(57)** (a) In this subsection:

1d. "Animals" include bacteria, viruses, and other microorganisms.

2. "Machinery" has the meaning given in s. 70.11 (27) (a) 2.

5. "Qualified research" has the meaning given in sub. (57d) (a) 4.

6. "Used exclusively" has the meaning given in sub. (3) (b) 3.

(b) The sales price from the sale of and the storage, use, or other consumption of all of the following:

3. Machines and specific processing equipment, including accessories, attachments, and parts for the machines or equipment, that are used exclusively and directly in raising animals that are sold primarily to a biotechnology business, a public or private institution of higher education, or a governmental unit for exclusive and direct use by any such entity in qualified research or manufacturing.

4. The items listed in sub. (3m) (a) to (m), drugs, semen for artificial insemination, fuel, and electricity that are used exclusively and directly in raising animals that are sold primarily to a biotechnology business, a public or private institution of higher education, or a governmental unit for exclusive and direct use by any such entity in qualified research or manufacturing.

**(57d)** (a) In this subsection:

1. "Building" has the meaning given in s. 70.111 (10) (a) 1.

2. "Combined group" has the meaning given in s. 71.255 (1) (a).

3. "Machinery" has the meaning given in s. 70.11 (27) (a) 2.

4. "Qualified research" means qualified research as defined under section 41 (d) (1) of the Internal Revenue Code, except that it includes qualified research that is funded by a member of a combined group for another member of a combined group.

5. "Used exclusively" has the meaning given in sub. (3) (b) 3.

(b) The sales price from the sale of and the storage, use, or other consumption of machinery and equipment, including attachments, parts, and accessories, and other tangible personal property or items or property under s. 77.52 (1) (b) or (c) that are sold to any of the following and that are consumed or destroyed or lose their identities while being used exclusively and directly in qualified research:

1. A person engaged in manufacturing in this state at a building assessed under s. 70.995.

2. A person engaged primarily in biotechnology in this state.

3. A combined group member who is conducting qualified research for another combined group member and that other combined group member is a person described under subd. 1. or 2.

**(58)** The sales price from the sale of and the storage, use, or other consumption of snowmaking and snow−grooming machines and equipment, including accessories, attachments, and parts for the machines and equipment and the fuel and electricity used to operate such machines and equipment, that are used exclusively and directly for snowmaking and snow grooming at ski hills, ski slopes, and ski trails.

**(59)** The sales price from the sales of and the storage, use, or other consumption of advertising and promotional direct mail.

**(60)** (a) In this subsection, "lump sum contract" means a contract to perform real property construction activities and to provide tangible personal property, items or property under s. 77.52 (1) (b) or (c), or taxable services and for which the contractor quotes the charge for labor, services of subcontractors, tangible personal property, items and property under s. 77.52 (1) (b) and (c), and taxable services as one price, including a contract for which the contractor itemizes the charges for labor, services of subcontractors, tangible personal property, items and property under s. 77.52 (1) (b) and (c), and taxable services as part of a schedule of values or similar document.

(b) The sales price from the sale of and the storage, use, or other consumption of tangible personal property, items and property under s. 77.52 (1) (b) and (c), and taxable services that are sold by a contractor as part of a lump sum contract, if the total sales price of all such taxable products is less than 10 percent of the total amount of the lump sum contract. Except as provided in par. (c), the contractor is the consumer of such taxable products and shall pay the tax imposed under this subchapter on the taxable products.

(c) If the lump sum contract is entered into with an entity that is exempt from taxation under sub. (9a), the contractor is the consumer of all taxable products used by the contractor in real property construction activities, but the contractor may purchase without tax, for resale, tangible personal property, items and property under s. 77.52 (1) (b) and (c), and taxable services that are sold by the contractor as part of the lump sum contract with the entity and that are not consumed by the contractor in real property construction activities.

**(61)** The sales price from the sale to, and the storage, use, or other consumption by, a person primarily engaged, as determined by the department, in commercial printing, book printing, or support activities for printing described under 323111, 323117, and 323120 of the North American Industry Classification System, of any of the following:

(a) Computers and servers used primarily to store copies of the product that are sent to a digital printer, a platemaking machine, or a printing press or used primarily in prepress or postpress activities.

(b) Tangible personal property purchased from out−of−state sellers that are temporarily stored, remain idle, and not used in this state and that are then delivered and used solely outside of this state.

(c) In this subsection:

1. "Postpress activities" include paper bronzing, die−cutting, edging, embossing, folding, gilding, gluing, and indexing.

2. "Prepress activities" include making print−ready plates, typesetting, trade binding, and sample mounting.

3. "Temporarily" means not more than 180 days.

**(62)** The sales price from the sale of and the storage, use, or other consumption of farm−raised deer, as defined in s. 95.001 (1) (ag), sold to a person who is operating a hunting preserve or game farm in this state.

**(62m)** The sales price from the sale of building materials, supplies, and equipment and the sale of services described in s. 77.52 (2) (a) 20. to; and the storage, use, or other consumption of the same property and services by; owners, lessees, contractors, subcontractors, or builders if that property or service is acquired solely for or used solely in, the construction or development of sports and entertainment arena facilities, as defined in s. 229.41 (11g), but not later than one year after the secretary of administration issues the certification under s. 229.42 (4e) (d).

**NOTE: Sub. (62m) was created as sub. (62) by 2015 Wis. Act 60 and renumbered to sub. (62m) by the legislative reference bureau under s. 13.92 (1) (bm) 2.**

**(63)** The sales price from the sale of and the storage, use, or other consumption of music sold in a tangible form to a person in the business of providing a taxable service through a jukebox if the music is used exclusively for the jukebox. For purposes of this subsection, music sold in a tangible form is a separate sale from the jukebox through which the music is played if the sales price of such property is separately indicated from the sales price of the jukebox on the invoice, bill of sale, or similar document that the seller gives to the purchaser.

**History:** 1971 c. 64, 154, 215, 311; 1973 c. 90, 156, 240; 1975 c. 39, 96, 102, 146, 200; 1977 c. 29; 1977 c. 83 ss. 13, 26; 1977 c. 250, 368, 418; 1979 c. 1, 34, 87, 174; 1981 c. 20; 1981 c. 79 s. 18; 1981 c. 96 s. 67; 1981 c. 264; 1981 c. 282 s. 47; 1981 c. 317; 1983 a. 27 ss. 1284d to 1284np, 2202 (38); 1983 a. 189 ss. 101, 106, 329 (5), (12), (13); 1983 a. 192, 287, 405, 426, 498, 510, 538, 544; 1985 a. 29, 149, 332; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31, 238, 270, 335, 359; 1991 a. 37, 39, 269, 316; 1993 a. 16, 263, 332; 1995 a. 27, 125, 225, 227; 1997 a. 27, 35, 41, 184, 237, 291; 1999 a. 9, 65, 83; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 16, 103, 109; 2003 a. 99, 128; 2005 a. 25, 74, 141, 149, 335, 366, 479; 2007 a. 11, 19, 20, 97, 130; 2009 a. 2, 28, 185, 204, 330; 2011 a. 7, 10, 32, 208, 260; 2013 a. 20, 145, 185, 324, 346; 2015 a. 55, 60, 126, 216, 251, 364; s. 13.92 (1) (bm) 2; s. 35.17 correction in (2m).

A taxpayer in the business of processing scrap metal is engaged in manufacturing under s. 77.51 (27) [now s. 77.54 (6m)]. H. Samuels Co. v. DOR, 70 Wis. 2d 1076, 236 N.W.2d 250 (1975).

A carrier's contract status is established under the "primary business test" if the carrier's primary occupation is the supplying of transportation for compensation, even though the operator owns the goods at the time of transport and carries them for the purpose of sale. If, however, the operator's primary business is manufacturing or another noncarrier commercial enterprise, a determination must be made as to whether the motor operations are in furtherance of the primary business or are con-

ducted as a related enterprise with the purpose of profiting from the transportation. Gensler v. DOR, 70 Wis. 2d 1108, 236 N.W.2d 648 (1975).

The sale of a supper club's furnishings and equipment was an "occasional sale" under s. 77.54 (7). Three Lions Supper Club v. DOR, 72 Wis. 2d 546, 241 N.W.2d 190 (1976).

Consumption of gas at interstate pipeline compressor stations in Wisconsin is protected from state use tax by the commerce clause. Midwestern Gas Transmission Co. v. DOR, 84 Wis. 2d 261, 267 N.W.2d 253 (1978).

To satisfy s. 77.51 (27) [now s. 77.54 (7h)], a change in name must be attributable to a change in the nature, purpose, and function of the article. DOR v. Bailey−Bohrman Steel Corp. 93 Wis. 2d 602, 287 N.W.2d 715 (1980).

Semitrailers are "truck bodies" under sub. (5) (a). DOR v. Trudell Trailer Sales, 104 Wis. 2d 39, 310 N.W.2d 612 (1981).

A vending machine company, which placed machines in schools and hospitals, was the "seller" of the products dispensed by its machines. Servomation Corp. v. DOR, 106 Wis. 2d 616, 317 N.W.2d 464 (1982).

Under the "use or function" test, a greenhouse was a "machine" used in floriculture under sub. (3). DOR v. Greiling, 112 Wis. 2d 602, 334 N.W.2d 118 (1983).

The exemption under sub. (9a) (f) is limited to services used by tax−exempt organizations and does not extend to services by those foundations. DOR v. EAA Aviation Foundation, 143 Wis. 2d 681, 422 N.W.2d 458 (Ct. App. 1988).

Calf hutches are not "machines" exempt from sales tax under sub. (3). L.T. Hampel Corp. v. DOR, 157 Wis. 2d 422, 459 N.W.2d 598 (Ct. App. 1990).

Motor vehicles and machinery used with motor vehicles are not used "directly" in recycling activities and are not exempt under sub. (26m). DOR v. Parks−Pioneer, 170 Wis. 2d 44, 487 N.W.2d 63 (Ct. App. 1992).

The exemption for occasional sales under sub. (7) cannot apply to a seller who continues to make sales in a business after the business was sold and surrender of the sales tax permit was attempted. Carrion Corp. v. DOR, 179 Wis. 2d 254, 507 N.W.2d 356 (Ct. App. 1993).

"Merchandise" as used in sub. (6) (b) denotes commodities that are bought and sold. Luetzow Industries v. DOR, 197 Wis. 2d 917, 541 N.W.2d 810 (Ct. App. 1995).

A Mississippi River excursion boat that embarked from a Wisconsin port, crossed into out−of−state water without landing in that state, then disembarked in Wisconsin was not engaged in "interstate commerce" under sub. (13). LaCrosse Queen, Inc. v. DOR, 208 Wis. 2d 439, 561 N.W.2d 686 (1997), 95−2754.

Newspaper carriers were found not to be customers of a publisher. The sub. (6) (b) exemption for packing material was not applicable to materials used to package newspapers for delivery to the carriers. Madison Newspapers, Inc. v. DOR, 228 Wis. 2d 745, 599 N.W.2d 51 (Ct. App. 1999), 98−2980.

A corporation is a "resident of this state" under sub. (5) (a) if it is domiciled in Wisconsin and incorporated under the laws of this state. DOR v. Johnson Welding & Manufacturing Co., Inc. 2000 WI App 179, 238 Wis. 2d 243, 617 N.W.2d 193, 99−2429.

**77.55 Exemptions from sales tax. (1)** There is exempted from the computation of the amount of the sales tax the sales price from the sale of any tangible personal property, or items or property under s. 77.52 (1) (b) or (c), or services to:

(a) The United States, its unincorporated agencies and instrumentalities.

(b) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

**(2)** There is exempted from the computation of the amount of the sales tax the sales price from sales of tangible personal property, and items and property under s. 77.52 (1) (b) and (c), to a common or contract carrier, shipped by the seller via the purchasing carrier under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property or item is actually transported to the out−of−state destination for use by the carrier in the conduct of its business as a carrier.

**(2m)** There is exempted from the computation of the amount of sales tax the sales price from sales of railroad crossties to a common or contract carrier, shipped wholly or in part by way of the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state if the property is transported to the out−of−state destination for use by the carrier in the conduct of its business as a carrier. Interruption of the shipment for storage, drying, processing or creosoting of the railroad crossties in this state does not invalidate the exemption under this subsection.

**(3)** There is exempted from the computation of the amount of the sales tax the sales price from sales of tangible personal property, and items and property under s. 77.52 (1) (b) and (c), purchased for use solely outside this state and delivered to a forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation, and actually delivered to a port outside the continental limits of the United States prior to making any use thereof.

**History:** 1985 a. 29; 1999 a. 83; 2009 a. 2, 28.

**77.56 Exemptions from use tax. (1)** The storage, use or other consumption in this state of tangible personal property, and items, property, and goods under s. 77.52 (1) (b), (c), and (d), the sales price from the sale of which is reported to the department in the measure of the sales tax, is exempted from the use tax.

**(2)** The loan by an automobile dealer of a motor vehicle to any school or school district for a driver training educational program conducted by the school or school district is exempt from the use tax.

**(3)** The donation to an entity specified under s. 77.54 (9a) of property that has been purchased tax−free for resale or upon the presentation of a valid exemption certificate is exempt from the use tax.

**History:** 1989 a. 31; 1995 a. 27; 2009 a. 2, 28.

**77.57 Liability of purchaser.** If a purchaser certifies in writing to a seller that the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) purchased will be used in a manner or for a purpose entitling the seller to regard the sales price from the sale as exempted by this subchapter from the computation of the amount of the sales tax and uses the property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) in some other manner or for some other purpose, the purchaser is liable for payment of the sales tax. The tax shall be measured by the sales price of the property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) to the purchaser.

**History:** 1983 a. 405; 2009 a. 2.

A seller is not relieved of liability if the purchaser's certificate on its face fails to state a legal basis for exempting the sale. DOR v. Moebius Printing Co. 89 Wis. 2d 610, 279 N.W.2d 213 (1979).

**77.58 Returns and payments. (1)** The taxes imposed by this subchapter for each calendar quarter are due and payable on the last day of the month next succeeding the calendar quarter for which imposed except that:

(a) If the amount of tax for any calendar quarter exceeds $1,200, the department may require by written notice to the taxpayer that the taxes imposed on and after the date specified in the notice are due and payable on the last day of the month next succeeding the calendar month for which imposed.

(b) If the amount of tax for any calendar quarter exceeds $3,600, the department may require by written notice to the taxpayer that the taxes imposed on and after the date specified in the notice are due and payable on the 20th day of the month next succeeding the calendar month for which imposed. The payment is timely if it fulfills the requirements under s. 77.61 (14).

**(1m)** Persons who owe amounts under this subchapter shall pay them by mailing or delivering them to the department or, if the department prescribes another method of submitting or another destination, those persons shall pay those amounts in that other method or to that other destination.

**(2)** A return shall be filed by the last day of the month next succeeding each calendar quarter for taxes imposed for the preceding calendar quarter except that:

(a) If payments are required to be made monthly and are due and payable on the last day of the month next succeeding the calendar month for which imposed under sub. (1) (a), a return shall be filed by the last day of the month next succeeding each calendar month for taxes imposed for the preceding calendar month.

(b) If payments are required to be made monthly and are due and payable on the 20th day of the month next succeeding the calendar month for which imposed under sub. (1) (b), a return shall be filed by the 20th day of the month next succeeding each calendar month for taxes imposed for the preceding calendar month.

(c) Returns and payments under this section are timely if they meet the requirements under s. 77.61 (14).

(d) Except for a seller who uses a certified service provider, a seller who registers through the streamlined sales tax governing board's central registration system and indicates at the time of registration that it anticipates making no sales into this state is not required to file a return in this state until such time as it makes a taxable sale that is sourced to this state under s. 77.522. Once a seller to which this provision applies makes a taxable sale that is sourced to this state under s. 77.522, that seller is required to file a return that is due by the last day of the month following the last day of the calendar quarter in which the sale occurred and shall continue to file returns by the last day of the month following the last day of each calendar quarter thereafter, unless the seller is notified in writing by the department of a different filing frequency.

**(3)** (a) Except as provided in sub. (2) (d), for purposes of the sales tax a return shall be filed by every seller. Except as provided in sub. (2) (d), for purposes of the use tax a return shall be filed by every retailer engaged in business in this state and by every person purchasing tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. If a qualified subchapter S subsidiary is not regarded as a separate entity under ch. 71, the owner of that subsidiary shall elect to either include the information for that subsidiary on the owner's return or file a separate electronic return for that entity. If a single−owner entity is disregarded as a separate entity under ch. 71, the owner shall elect to either include the information from the entity on the owner's return or file a separate electronic return for that entity. If an owner that owns more than one entity that is disregarded as a separate entity under ch. 71 elects to file a separate return for one of its disregarded entities, the owner shall file separate returns for all of its disregarded entities. Returns filed under this paragraph shall be signed by the person required to file the return or by a duly authorized agent but need not be verified by oath.

(b) The return shall show the amount of the taxes for the period covered by the return and such other information as the department deems necessary for the proper administration of this subchapter.

**(4)** The person required to file the return shall deliver the return together with a remittance of the amount of the tax due to the office of the department or such other place as the department designates in the manner and form prescribed by the department.

**(5)** The department, if it deems it necessary to ensure payment to or facilitate the collection by the state of the amount of taxes, may require returns and payments of the amount of taxes for other than quarterly periods. The department may, if satisfied that the revenues will be adequately safeguarded, permit returns and payments of the amount of taxes for other than quarterly periods. Such returns or payments shall be due or payable by the last day of the month next succeeding the end of the reporting or paying period, except that the department may require by written notice to the taxpayer that the returns or payments shall be due or payable by the 20th day of the month next succeeding the end of the reporting or paying period. Any person who discontinues business or who does not hold a valid permit under s. 77.52 (9) prior to the end of a reporting period shall, within 30 days after such discontinuance or after the date on which the person ceases to hold a valid permit, file a return and pay the taxes due from the beginning of such reporting period. If a business is discontinued and a final report thereon has been made covering all payments due or refunds claimed as provided in this section, the account shall be closed, the seller's permit terminated and, notwithstanding any other provisions of this section, no further reports may be required.

**(6)** For the purposes of the sales tax, the sales price from rentals, licenses, or leases of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) shall be reported and the tax paid in accordance with such rules as the department prescribes.

**(6m)** (a) The department may, in cases where it is satisfied that an undue hardship would otherwise result, permit the reporting of a sales price or purchase price on some basis other than the accrual basis.

(b) The entire sales price of credit transactions shall be reported in the period in which the sale is made without reduction in the amount of tax payable by the retailer by reason of the retailer's transfer at a discount of any open account, note, conditional sales contract, lease contract, or other evidence of indebtedness.

**(7)** The department for good cause may extend for not to exceed one month the time for making any return or paying any amount required to be paid by this subchapter. The extension may be granted at any time provided a request therefor is filed with the department within or prior to the period for which the extension is requested.

**(8)** In any case in which a retailer who has accepted a resale or exemption certificate is subsequently required to pay a sales or use tax measured by the sale, the retailer may recover the amount of the tax as a debt due from the person who furnished such certificate.

**(9a)** In addition to filing a return as provided in this section, a person described under s. 77.524 (3), (4), or (5) shall provide to the department any information that the department considers necessary for the administration of this subchapter, in the manner prescribed by the department, except that the department may not require that the person provide such information to the department more than once every 180 days.

**History:** 1971 c. 316; 1975 c. 39, 199; 1977 c. 29, 142; 1979 c. 1, 174, 221, 355; 1981 c. 20; 1983 a. 405; 1991 a. 316; 1995 a. 27; 1997 a. 27; 2009 a. 2, 28, 330; 2013 a. 20.

**77.585 Return adjustments. (1)** (a) In this subsection, "bad debt" means the portion of the sales price or purchase price that the seller has previously reported as taxable under this subchapter, and for which the seller has paid the tax, and that the seller may claim as a deduction under section 166 of the Internal Revenue Code. "Bad debt" does not include financing charges or interest, sales or use taxes imposed on the sales price or purchase price, uncollectible amounts on tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) that remain in the seller's possession until the full sales price or purchase price is paid, expenses incurred in attempting to collect any debt, debts sold or assigned to 3rd parties for collection, and repossessed property or items.

(b) A seller may claim as a deduction on a return under s. 77.58 the amount of any bad debt that the seller writes off as uncollectible in the seller's books and records and that is eligible to be deducted as a bad debt for federal income tax purposes, regardless of whether the seller is required to file a federal income tax return. A seller who claims a deduction under this paragraph shall claim the deduction on the return under s. 77.58 that is submitted for the period in which the seller writes off the amount of the deduction as uncollectible in the seller's books and records and in which such amount is eligible to be deducted as bad debt for federal income tax purposes. If the seller subsequently collects in whole or in part any bad debt for which a deduction is claimed under this paragraph, the seller shall include the amount collected in the return filed for the period in which the amount is collected and shall pay the tax with the return.

(c) For purposes of computing a bad debt deduction or reporting a payment received on a previously claimed bad debt, any payment made on a debt or on an account is applied first to the price of the tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or service sold, and the proportionate share of the sales tax on that property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or service, and then to interest, service charges, and other charges related to the sale.

(d) A seller may obtain a refund of the tax reported for any bad debt amount deducted under par. (b) that exceeds the amount of the seller's taxable sales as provided under s. 77.59 (4), except that the period for making a claim as determined under s. 77.59 (4) begins on the date on which the return on which the bad debt could be claimed would have been required to be submitted to the department under s. 77.58.

(e) If a seller is using a certified service provider, the certified service provider may claim a bad debt deduction under this subsection on the seller's behalf if the seller has not claimed and will not claim the same deduction. A certified service provider who receives a bad debt deduction under this subsection shall credit that deduction to the seller and a certified service provider who receives a refund under this subsection shall submit that refund to the seller.

(f) If a bad debt relates to the retail sales of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services that were sourced to this state and to one or more other states, as determined under s. 77.522, the total amount of such bad debt shall be apportioned among the states to which the underlying sales were sourced in a manner prescribed by the department to arrive at the amount of the deduction under par. (b).

**NOTE: Sub. (1) is renumbered, in part, amended, in part, and created, in part, eff. 7−1−17 by 2013 Wis. Act 229, as affected by 2015 Wis. Act 55, ss. 4750 and 9437 (2L), to read:**

**(1) (a) In this subsection:**

**1. "Bad debt" means the portion of the sales price or purchase price that the seller has previously reported as taxable under this subchapter, and for which the seller has paid the tax, and that the seller or lender may claim as a deduction under section 166 of the Internal Revenue Code. "Bad debt" does not include financing charges or interest, sales or use taxes imposed on the sales price or purchase price, uncollectible amounts on tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) that remain in the seller's possession until the full sales price or purchase price is paid, expenses incurred in attempting to collect any debt, debts sold or assigned to 3rd parties for collection, not including dual purpose credit debts and private label credit debts, and repossessed property or items.**

**2. "Dual purpose credit card" means a credit card that may be used as a private label credit card or to make purchases from persons other than the seller whose name or logo appears on the card or the seller's affiliates or franchisees, if the credit card issuer is able to determine the sales receipts of the seller and the seller's affiliates or franchisees apart from any sales receipts of unrelated persons.**

**3. "Dual purpose credit debt" means accounts and receivables that result from credit sale transactions using a dual purpose credit card, but only to the extent the account or receivable balance resulted from purchases made from the seller whose name or logo appears on the card.**

**4. a. "Lender" means any person who owns a private label credit debt, an interest in a private label credit debt, a dual purpose credit debt, or an interest in a dual purpose credit debt, if the person purchased the debt or interest directly from a seller who remitted the tax imposed under this subchapter or from a third party or if the person originated the debt or interest pursuant to the person's contract with the seller who remitted the tax imposed under this subchapter or with a third party.**

**b. "Lender" includes any person who is a member of the same affiliated group, as defined under section 1504 of the Internal Revenue Code, as a lender or is an assignee or other transferee of a lender.**

**5. "Private label credit card" means any charge card or credit card that identifies a seller's name or logo on the card and that may be used only for purchases from that seller or from any of the seller's affiliates or franchisees.**

**6. "Private label credit debt" means accounts and receivables that result from credit sale transactions using a private label credit card, but only to the extent the account or receivable balance resulted from purchases made from the seller whose name or logo appears on the card.**

**(b) A seller may claim as a deduction on a return under s. 77.58 the amount of any bad debt that the seller or lender writes off as uncollectible in the seller's or lender's books and records and that is eligible to be deducted as a bad debt for federal income tax purposes, regardless of whether the seller or lender is required to file a federal income tax return. A seller who claims a deduction under this paragraph shall claim the deduction on the return under s. 77.58 that is submitted for the period in which the seller or lender writes off the amount of the deduction as uncollectible in the seller's or lender's books and records and in which such amount is eligible to be deducted as bad debt for federal income tax purposes. If the seller or lender subsequently collects in whole or in part any bad debt for which a deduction is claimed under this paragraph, the seller shall include the amount collected in the return filed for the period in which the amount is collected and shall pay the tax with the return.**

**(bm) For purposes of par. (b), a seller may compute the seller's bad debt deduction using an estimate, if the department approves the method for computing the estimate. The department may audit the seller's books and records to review the estimate and adjust the estimate as necessary to reflect the actual allowable bad debt amount.**

**(c) For purposes of computing a bad debt deduction or reporting a payment received on a previously claimed bad debt, any payment made on a debt or on an account is applied first to the price of the tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or service sold, and the proportionate share of the sales tax on that property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or service, and then to interest, service charges, and other charges related to the sale. If payment is received on an account for which the balance reflects multiple sales transactions, the payment is applied to the sales transactions in the same order in which the sales transactions occurred.**

**(d) A seller may obtain a refund of the tax reported for any bad debt amount deducted under par. (b) that exceeds the amount of the seller's taxable sales as provided under s. 77.59 (4), except that the period for making a claim as determined under s. 77.59 (4) begins on the date on which the return on which the bad debt could be claimed would have been required to be submitted to the department under s. 77.58.**

**(e) If a seller is using a certified service provider, the certified service provider may claim a bad debt deduction under this subsection on the seller's behalf if the seller has not claimed and will not claim the same deduction. A certified service provider who receives a bad debt deduction under this subsection shall credit that deduction to the seller and a certified service provider who receives a refund under this subsection shall submit that refund to the seller.**

**(f) If a bad debt relates to the retail sales of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services that were sourced to this state and to one or more other states, as determined under s. 77.522, the total amount of such bad debt shall be apportioned among the states to which the underlying sales were sourced in a manner prescribed by the department to arrive at the amount of the deduction under par. (b).**

**(2)** If a lessor of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) has reimbursed the vendor for the sales tax on the sale of the property, items, or goods by the vendor to the lessor, the tax due from the lessor on the rental receipts may be offset by a credit equal to the tax otherwise due on the rental receipts from the property, items, or goods for the reporting period. The credit shall expire when the cumulative rental receipts equal the sales price upon which the vendor paid sales taxes to this state.

**(3)** If a purchaser of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) has reimbursed the vendor of the property, items, or goods for the sales tax on the sale and subsequently, before making any use of the property, items, or goods other than retention, demonstration, or display while holding it for sale or rental, makes a taxable sale of the property, items, or goods the tax due on the taxable sale may be offset by the tax reimbursed.

**(4)** A seller may claim a deduction on any part of the sales price or purchase price that the seller refunds in cash or credit as a result of returned tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) or adjustments in the sales price or purchase price after the sale has been completed, if the seller has included the refunded price in a prior return made by the seller and has paid the tax on such price, and if the seller has returned to the purchaser in cash or in credit all tax previously paid by the purchaser on the amount of the refund at the time of the purchase. A deduction under this subsection shall be claimed on the return for the period in which the refund is paid.

**(5)** No reduction in the amount of tax payable by the retailer is allowable in the event that tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) sold on credit are repossessed except where the entire consideration paid by the purchaser is refunded to the purchaser or where a credit for a worthless account is allowable under sub. (1).

**(6)** A purchaser who is subject to the use tax on the storage, use, or other consumption of fuel may claim a deduction from the purchase price that is subject to the use tax for fuel taxes refunded by this state or the United States to the purchaser that is included in the purchase price of the fuel.

**(7)** For sales tax purposes, if a retailer establishes to the department's satisfaction that the sales tax has been added to the total amount of the sales price and has not been absorbed by the retailer, the total amount of the sales price shall be the amount received exclusive of the sales tax imposed.

**(8)** (a) A sale or purchase involving transfer of ownership of tangible personal property, or items or property under s. 77.52 (1)

(b) or (c), is completed at the time when possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent. For purposes of this paragraph, a common carrier or the U.S. postal service shall be considered the agent of the seller, regardless of any f.o.b. point and regardless of the method by which freight or postage is paid.

(b) 1. Except as provided in subd. 2., a sale or purchase involving a digital good under s. 77.52 (1) (d) is completed at the time when possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent or when the digital good is first used, whichever comes first.

2. A sale or purchase of a product transferred electronically, including a digital good under s. 77.52 (1) (d), that is sold by subscription, is completed at the time when the payment for the subscription is due to the seller. For purposes of this subdivision, "subscription" means an agreement with a seller that grants the consumer the right to obtain products transferred electronically from within one or more product categories having the same tax treatment, in a fixed quantity or for a fixed period of time, or both.

**(9)** (a) Subject to 2005 Wisconsin Act 479, section 17, a purchaser may claim as a deduction that portion of its purchase price of Internet equipment used in the broadband market for which the tax was imposed under this subchapter, if the purchaser certifies to the department of commerce, in the manner prescribed by the department of commerce, that the purchaser will, within 24 months after July 1, 2007, make an investment that is reasonably calculated to increase broadband Internet availability in this state. The purchaser shall claim the deduction in the same reporting period as the purchaser paid the tax imposed under this subchapter.

(b) Every person who is required to make the investment under par. (a) shall, within 60 days after the end of the year in which the investment is made, file a report with the department of commerce that provides a detailed description of the investment, including the amount invested. The department of commerce shall provide copies of the report to the department of administration, the department of revenue, and the public service commission.

**(10)** A retailer who receives an exemption certificate that complies with s. 77.52 (14) after reporting a sale covered by the exemption certificate as taxable, having paid the tax to the department, and having returned to the buyer in cash or in credit all tax previously paid by the buyer, may claim a deduction on the return filed for the reporting period in which the exemption certificate is received, for the sales price or purchase price previously reported as taxable. This subsection does not apply if the reporting period in which the exemption certificate is received is in a taxable year of the retailer that is subsequent to the taxable year of the retailer in which the sale covered by the exemption certificate occurred. For purposes of this subsection, the taxable year of the retailer is the same as the retailer's taxable year under ch. 71.

**History:** 2009 a. 2 ss. 473, 474, 492; 2009 a. 28, 330; 2013 a. 20, 229; 2015 a. 55, ss. 4750, 9437 (2L); 2015 a. 191.

**77.59 Deficiency and refund determinations. (1)** The department may, by office audit, determine the tax required to be paid to the state or the refund due to any person pursuant to this subchapter. The determination may be made upon the basis of the facts contained in the return being audited or upon the basis of any other information within the department's possession. The determination shall be presumed to be correct and the burden of proving it to be incorrect shall be upon the person challenging the correctness thereof. One or more such office audit determinations may be made of the amount due for any one or for more than one period.

**(2)** The department may, by field audit, determine the tax required to be paid to the state or the refund due to any person under this subchapter. The determination may be made upon the basis of the facts contained in the return being audited or upon any other information in the department's possession. The determination may be made on the basis of sampling, whether or not the person being audited has complete records of transactions and whether or not the person being audited consents. The department may examine and inspect the books, records, memoranda and property of any person in order to verify the tax liability of that person or of another person. The department may subpoena any person to give testimony under oath before it and to produce whatever books, records or memoranda are necessary in order to enable the department to verify the tax liability of that person or of another person. The determination shall be presumed to be correct and the burden of proving it to be incorrect shall be upon the person challenging its correctness. A determination by the department in a field audit becomes final at the expiration of the appeal periods provided in sub. (6), and the tax liability of the taxpayer for the period audited may not be subsequently adjusted except as provided in sub. (4) (b), (8) or (8m). If the taxpayer files or is required to file more than one return for the taxpayer's fiscal year or for a calendar year, the determination made by field audit for that fiscal or calendar year shall be based on the receipts, purchases, deductions and exemptions for the entire fiscal or calendar year.

**(2m)** The department may audit, or may authorize others to audit, sellers and certified service providers who are registered with the department pursuant to the agreement, as defined in s. 77.65 (2) (a).

**(3)** No determination of the tax liability of a person may be made unless written notice of the determination is given to the person within 4 years after the due date of the person's Wisconsin income or franchise tax return that corresponds to the date the sale or purchase was completed or, if exempt, within 4 years of the 15th day of the 4th month of the year following the close of the calendar or fiscal year that corresponds to the date the sale or purchase was completed; within 4 years of the dissolution of a corporation; or within 4 years of the date any sales and use tax return required to be filed for any period in that year was filed, whichever is later. The notice required under this paragraph shall specify whether the determination is an office audit determination or a field audit determination, and it shall be in writing. If the department is unable to obtain service by mail, publication of it as a class 3 notice, under ch. 985, shall be service of notice in any case where notice is required under this subchapter.

**(3m)** If the taxpayer has consented in writing to the giving of notice of determination after the time under sub. (3), the notice may be given, and the taxpayer may file a claim for a refund, at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing.

**(4)** (a) Except as provided in sub. (3m), at any time within 4 years after the due date of a person's Wisconsin income or franchise tax return that corresponds to the date the sale or purchase was completed or, if exempt, within 4 years of the 15th day of the 4th month of the year following the close of the calendar or fiscal year that corresponds to the date the sale or purchase was completed, that person may, unless a determination by the department by office audit or field audit of a seller has been made, and unless a determination by office audit of a buyer other than an audit in which the tax that is the subject of the refund claim was not adjusted has been made, and unless a determination by field audit of the buyer has been made, file with the department a claim for refund of taxes paid to the department by that person. If the amount of the claim is at least $50 or if either the seller has ceased doing business, the buyer is being field audited, or the seller may no longer file a claim, the buyer may, within the period under this subsection, file a claim with the department for a refund of the taxes paid to the seller. A claim is timely if it fulfills the requirements under s. 77.61 (14). A buyer may claim a refund under this paragraph only on a form prescribed by the department, only by signing that form, and only if the seller signs the form unless the department waives that requirement. If both a buyer and a seller file a valid claim for the same refund, the department may pay either claim. The claim for refund shall be regarded as a request

for determination. The determination thus requested shall be made by the department within one year after the claim for refund is received by it unless the person has consented in writing to an extension of the one−year time period prior to its expiration.

(b) A claim for refund that is not to be passed along to customers under sub. (8m) may be made within 2 years of the determination of a tax assessed by office audit or field audit and paid if the tax was not protested by the filing of a petition for redetermination. No claim for refund may be allowed with regard to items that were not adjusted in the office audit or field audit. A claim is timely if it fulfills the requirements under s. 77.61 (14). If a claim is filed under this paragraph, the department may make an additional assessment in respect to any item that was a subject of the prior assessment.

**(5)** The department may offset the amount of any refund for a period, together with interest on the refund, against deficiencies for another period, and against penalties and interest on the deficiencies, or against any amount of whatever kind, due and owing on the books of the department from the person who is entitled to the refund. If the refund is to be paid to a buyer, the department may also set off amounts in the manner in which it sets off income tax and franchise tax refunds under s. 71.93 and may set off amounts for child support or maintenance or both in the manner in which it sets off income taxes under ss. 49.855 and 71.93 (3), (6) and (7). No person has any right to, or interest in, any refund under this chapter until setoff under ss. 49.855, 71.93, and 71.935 has been completed.

**(5m)** A seller who receives a refund under sub. (4) (a) or (b) of taxes that the seller has collected from buyers, who collects amounts as taxes erroneously from buyers, but who does not remit such amounts to the state, or who is entitled to a refund under sub. (4) (a) or (b) that is offset under sub. (5), shall submit the taxes and related interest to the buyers from whom the taxes were collected, or to the department if the seller cannot locate the buyers, within 90 days after the date of the refund, after the date of the offset, or after discovering that the seller has collected taxes erroneously from the buyers. If the seller does not submit the taxes and related interest to the department or the buyers within that period, the seller shall submit to the department any part of a refund or taxes that the seller does not submit to a buyer or to the department along with a penalty of 25 percent of the amount not submitted or, in the case of fraud, a penalty equal to the amount not submitted. A person who collects amounts as taxes erroneously from buyers for a real property construction activity or nontaxable service may reduce the taxes and interest that he or she is required to submit to the buyer or to the department under this subsection for that activity or service by the amount of tax and interest subsequently due and paid on the sale of or the storage, use, or other consumption of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d) that are used by the person in that activity or service and transferred to the buyer.

**(6)** Except as provided in sub. (4) (b), a determination by the department is final unless, within 60 days after receipt of the notice of the determination, the taxpayer, or other person directly interested, petitions the department for a redetermination. A petition is timely if it fulfills the requirements under s. 77.61 (14). In the case of notice served by publication, the 60−day period commences with the last day of publication of the notice.

(a) Within 6 months of the receipt by the department of the petition for redetermination, the department shall notify the petitioner of its redetermination. The redetermination shall become final 60 days after receipt by the petitioner of notice of the redetermination unless, within that 60−day period, the petitioner appeals the redetermination under par. (b).

(b) Appeals from the department's redeterminations shall be governed by the statutes applicable to income or franchise tax appeals but all appeals from decisions of the tax appeals commission with respect to the taxes imposed by this subchapter shall be appealed to the circuit court for Dane County or to the circuit court for the county where the taxpayer's commercial domicile, as defined in s. 71.01 (1b), is located, where the taxpayer owns other property, or where the taxpayer transacts business in this state.

(c) The department shall notify any person who files a petition for redetermination that the person may deposit the entire deficiency determination, including any penalty or interest, with the department when the petition is filed or at any time before the department makes its redetermination. Any deposited amount which is refunded shall bear interest at the rate of 3 percent per year during the time the funds were on deposit. A person may also pay any portion of a deficiency determination admitted to be correct and the payment shall be considered an admission of the validity of that portion of the deficiency determination and may not be recovered in an appeal or in any other action or proceeding.

**Cross−reference:** See also s. Tax 1.14, Wis. adm. code.

**(7)** If the department believes that the collection of any tax imposed by this subchapter will be jeopardized by delay, it shall notify the person determined to owe the tax of its intention to proceed under s. 71.91 (5) for collection of the amount determined to be owing, including penalties and interest. Such notice shall be by certified or registered mail or by personal service and the warrant of the department shall not issue if the person, within 10 days after such notice furnishes a bond in such amount not exceeding double the amount determined to be owing and with such sureties as the department approves, conditioned upon the payment of so much of the taxes, interest, and penalties as shall finally be determined to be due. Nothing in this subsection shall affect the review of determinations of tax as provided in this subchapter and any amounts collected under this subsection shall be deposited with the department and disbursed after final determination of the taxes as are amounts deposited under ss. 71.89 (1) and 71.90 (2).

**(8)** Notwithstanding any other provision of this subchapter, if a person fails to file a report or return required by this subchapter or files a false or fraudulent report or return with the intent in either case to defeat or evade tax required to be paid, the department may determine the proper tax due at any time and without regard to when such failure or filing occurred and without regard to whether a field audit determination was previously made. The department may, at any time, examine and inspect any of the books, records, memoranda, or property of any person and make whatever inquiry, including the subpoena of persons, necessary to the determination of whether a failure to file or a filing was with the intent to defeat or evade the tax.

**(8m)** Within the time period under sub. (4), the department of revenue may refund excess taxes paid to it under this chapter, even if the person applying for the refund has been field audited in respect to those taxes, if the applicant's customers have filed valid claims for refunds with the applicant and if the refund is passed along to those customers.

**(9)** (a) Except as provided in par. (b), if any person fails to file a return, the department shall make an estimate of the amount of the sales price of the person's sales, or, as the case may be, of the amount of the total purchase price of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable service sold or purchased by the person, the sale by or the storage, use, or other consumption of which in this state is subject to sales or use tax. The estimate shall be made for the period in respect to which the person failed to make a return and shall be based upon any information which is in the department's possession or may come into its possession. Upon the basis of this estimate the department shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to 25 percent thereof. One or more such determinations may be made for one or for more than one period. When a business is discontinued a determination may be made at any time thereafter, within the periods specified in sub. (3), as to liability arising out of that business.

(b) If a seller is not required to register and obtain a permit under s. 77.52 (7) or 77.53 (9), but has registered and obtained a permit under s. 77.52 (7) or 77.53 (9) and has failed to timely file a return that is due, the department shall notify the seller of the fail-

ure to file and provide the seller at least 30 days to file the return prior to making the estimate described in par. (a), except that if the seller has a history of not filing returns, or filing returns late, the department may make the estimate under par. (a) without providing such notice.

**(9m)** If the department determines that a liability exists under this subchapter and that the liability may be owed by more than one person, the department may assess the entire amount to each person, specifying that it is assessing in the alternative. If the department determines that a liability exists under this subchapter and that the liability may be for either sales taxes or use taxes, the department may make an assessment for both taxes, specifying that it is assessing in the alternative.

**(9n)** (a) Notwithstanding s. 73.03 (47), and except as provided in par. (b), no seller or certified service provider is liable for tax, interest, or penalties imposed on a transaction under this subchapter if the seller or certified service provider charged and collected the incorrect amount of the sales or use tax as a result of relying on erroneous data provided in the databases under s. 73.03 (61) (e) and (f).

(b) Notwithstanding s. 73.03 (47), no seller or certified service provider is liable for the tax, interest, or penalties imposed on a transaction under this subchapter if the seller or certified service provider failed to collect the sales and use taxes due on an item or transaction because the seller or certified service provider relied on the certification under s. 73.03 (61) (b). This paragraph does not apply to a seller or certified service provider who has incorrectly classified an item or transaction into a specific product category, unless such classification was approved by the states that are signatories to the agreement, as defined in s. 77.65 (2) (a). If the state determines that it has incorrectly classified an item or transaction, sellers and certified service providers that do not revise the classification of the item or transaction within 10 days after receiving notice from the department that an item or transaction was incorrectly classified are liable for the tax, interest, or penalties imposed on the item or transaction for the incorrect classification after the 10−day period.

(c) Except as otherwise provided in this paragraph, a purchaser is not liable for the tax, interest, or penalties imposed on a transaction under this subchapter if the seller or certified service provider from whom the purchaser made the purchase relied on erroneous data provided in the databases under s. 73.03 (61) (e) and (f) or if the purchaser relied on erroneous data provided in the databases under s. 73.03 (61) (e) and (f). With respect to reliance on the database provided under s. 73.03 (61) (e), the relief provided under this paragraph is limited to the erroneous classification in the database of terms defined in this subchapter and specifically identified in the database as being "taxable," "exempt," "included in sales price" or "excluded from sales price," or "included in the definition" or "excluded from the definition." With respect to reliance on the database provided under s. 73.03 (61) (f), the relief provided under this paragraph does not apply to transactions by which the product is received by the purchaser at the business location of the seller.

**(9p)** (a) If a customer purchases a service that is subject to 4 USC 116 to 126, as amended by P.L. 106−252, and if the customer believes that the amount of the tax assessed for the service under this subchapter or the place of primary use or taxing jurisdiction assigned to the service is erroneous, the customer may request that the service provider correct the alleged error by sending a written notice to the service provider. The notice shall include a description of the alleged error, the street address for the customer's place of primary use of the service, the account name and number of the service for which the customer seeks a correction, and any other information that the service provider reasonably requires to process the request. Within 60 days from the date that a service provider receives a request under this paragraph, the service provider shall review its records to determine the customer's taxing jurisdiction. If the review indicates that there is no error as alleged, the service provider shall explain the findings of the review in writing to the customer. If the review indicates that there is an error as alleged, the service provider shall correct the error and shall refund or credit the amount of any tax collected erroneously, along with the related interest, as a result of the error from the customer in the previous 48 months, consistent with s. 77.59 (4). A customer may take no other action against the service provider, or commence any action, to correct an alleged error in the amount of the tax assessed under this subchapter on a service that is subject to 4 USC 116 to 126, as amended by P.L. 106−252, or to correct an alleged error in the assigned place of primary use or taxing jurisdiction, unless the customer has exhausted his or her remedies under this paragraph.

(b) If a customer purchases a service that is not subject to 4 USC 116 to 126, as amended by P.L. 106−252, tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), and if the customer believes that the amount of the tax assessed for the sale of the service, property, items, or goods under this subchapter is erroneous, the customer may request that the seller correct the alleged error by sending a written notice to the seller. The notice shall include a description of the alleged error and any other information that the seller reasonably requires to process the request. Within 60 days from the date that a seller receives a request under this paragraph, the seller shall review its records to determine the validity of the customer's claim. If the review indicates that there is no error as alleged, the seller shall explain the findings of the review in writing to the customer. If the review indicates that there is an error as alleged, the seller shall correct the error and shall refund the amount of any tax collected erroneously, along with the related interest, as a result of the error from the customer, consistent with s. 77.59 (4). A customer may take no other action against the seller, or commence any action against the seller, to correct an alleged error in the amount of the tax assessed under this subchapter on a service that is not subject to 4 USC 116 to 126, as amended by P.L. 106−252, tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d) unless the customer has exhausted his or her remedies under this paragraph.

**(9r)** With regard to a purchaser's request for a refund under this section, a seller is presumed to have reasonable business practices if the seller uses a certified service provider, a certified automated system, as defined in s. 77.524 (1) (am), or a proprietary system certified by the department to collect the taxes imposed under this subchapter and if the seller has remitted to the department all taxes collected under this subchapter, less any deductions, credits, or allowances.

**(10)** As used in this section, "tax" or "taxes" include penalties and interest.

**History:** 1975 c. 186; 1979 c. 174, 203, 221; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1985 a. 261 ss. 13g, 13m, 13t; 1987 a. 312 s. 17; 1991 a. 39, 269; 1993 a. 308, 437; 1995 a. 404; 2003 a. 33; 2005 a. 49; 2007 a. 20; 2009 a. 2 ss. 386, 493 to 498; 2009 a. 28, 330; 2013 a. 20; 2015 a. 55, 216.

A "spot check" by the department of a taxpayer's records for a single month was a "field audit" under sub. (2) covering that period only. DOR v. Moebius Printing Co. 89 Wis. 2d 610, 279 N.W.2d 213 (1979).

All persons who have paid excess sales tax may file a claim for a refund under sub. (4) regardless of whether the taxes were paid to a retailer or to the department. Dairyland Harvestore v. DOR, 151 Wis. 2d 799, 447 N.W.2d 56 (Ct. App. 1989).

If a sales and use tax return is never filed, the statute of limitations under sub. (3) never begins to run. Zignego Co., Inc. v. DOR, 211 Wis. 2d 819, 565 N.W.2d 590 (Ct. App. 1997), 96−1965.

**77.60 Interest and penalties. (1)** (a) Except as provided in par. (b), unpaid taxes shall bear interest at the rate of 12 percent per year from the due date of the return until paid or deposited with the department. Taxes refunded to the seller shall bear interest at 3 percent per year from the due date of the return to the date on which the refund is certified on the refund rolls. An extension of time within which to file a return shall not extend the due date of the return for purposes of interest computation. Taxes refunded to the buyer shall bear interest at 3 percent per year from the last day of the month following the month during which the buyer paid

the tax to the date on which the refund is certified on the refund rolls.

(b) Any unpaid taxes for a calendar year or a fiscal year resulting from a field audit shall bear interest at the rate of 12 percent per year from the due date of the taxpayer's Wisconsin income or franchise tax return for that calendar or fiscal year or, if exempt, from the 15th day of the 4th month of the year after the close of the calendar or fiscal year for which the taxes are due to the date on which the taxes are paid or, if unpaid, become delinquent, whichever is earlier.

**(1m)** All nondelinquent payments of additional amounts owed shall be applied in the following order: penalties, interest, tax principal.

**(2)** Upon a showing by the department under s. 73.16 (4), delinquent sales and use tax returns shall be subject to a $20 late filing fee unless the return was not timely filed because of the death of the person required to file. The fee shall not apply if the department has failed to issue a seller's permit or a use tax registration within 30 days of the receipt of an application for a seller's permit or use tax registration accompanied by the fee established under s. 73.03 (50), if the person does not hold a valid certificate under s. 73.03 (50), and the security required under s. 77.61 (2) has not been placed with the department. Delinquent sales and use taxes shall bear interest at the rate of 1.5 percent per month until paid. The taxes imposed by this subchapter shall become delinquent if not paid:

(a) In the case of a timely filed return, on or before the due date of the return, or on or before the expiration of an extension period if one has been granted.

(b) In the case of no return filed or a return filed late, by the due date of the return.

(c) In the case of deficiency determinations, on or before the due date specified in the notice of deficiency, except that if the determination is contested before the tax appeals commission or in the courts, on or before the 30th day following the date on which the order or judgment representing the final determination becomes final.

**(3)** If an incorrect return is filed, and upon a showing by the department under s. 73.16 (4), the entire tax finally determined shall be subject to a penalty of 25 percent, or 50 percent in the case of returns under s. 77.61 (1) (c), of the tax exclusive of interest or other penalty.

**(4)** In case of failure to file any return required under authority of s. 77.58 by the due date, determined with regard to any extension of time for filing, and upon a showing by the department under s. 73.16 (4), there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is not for more than one month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate. For purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the due date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

**(5)** If a person fails to file a return when due or files a false or fraudulent return with intent in either case to defeat or evade the tax imposed by this subchapter, a penalty of 50 percent shall be added to the tax required to be paid, exclusive of interest and other penalties.

**(6)** Any person who fails to furnish any return required to be made or who fails to furnish any data required by the department is guilty of a misdemeanor.

**(7)** Any person, including an officer of a corporation, required to make, render, sign or verify any report or return required by this subchapter who makes a false or fraudulent report or return or who fails to furnish a report or return when due with the intent, in either case, to defeat or evade the tax imposed by this subchapter, is guilty of a misdemeanor.

**(8)** Any person engaged in the business of making sales at retail who is at the same time engaged in some other kind of business, occupation or profession not taxable under this subchapter, shall keep books to show separately the transactions used in determining the tax herein levied. In the event of such person failing to keep such separate books, there shall be levied upon the person a tax at the rate provided in s. 77.52 or 77.53 on the receipts of both or all of the person's businesses, occupations or professions.

**(9)** Any person who is required to collect, account for or pay the amount of tax imposed under this subchapter and who willfully fails to collect, account for or pay to the department shall be personally liable for such amounts, including interest and penalties thereon, if that person's principal is unable to pay such amounts to the department. The personal liability of such person as provided in this subsection shall survive the dissolution of the corporation or other form of business association. Personal liability may be assessed by the department against such person under this subchapter for the making of sales tax determinations against retailers and shall be subject to the provisions for review of sales tax determinations against retailers, but the time for making such determinations shall not be limited by s. 77.59 (3). "Person", in this subsection, includes an officer, employee or other responsible person of a corporation or other form of business association or a member, employee or other responsible person of a partnership, limited liability company or sole proprietorship who, as such officer, employee, member or other responsible person, is under a duty to perform the act in respect to which the violation occurs.

**(10)** It is unlawful for any person to aid, abet or assist another in making any false or fraudulent return or false statement in any return required by this subchapter, with intent to defraud the state or evade payment of the tax, or any part thereof, imposed by this subchapter. Anyone in violation hereof shall be guilty of a misdemeanor.

**(11)** Whenever a person collects tax moneys imposed under s. 77.52, 77.53 or 77.71 from a consumer, user or purchaser, the person receives those tax moneys as trust funds and state property. Any person who intentionally fails or refuses to pay over those tax moneys to the state at the time required by this subchapter or who fraudulently withholds, appropriates or uses any of those tax moneys is guilty of theft under s. 943.20, punishable as specified in s. 943.20 (3) according to the amount of tax moneys involved. This subsection applies regardless of the person's interest in those tax moneys. Payment to creditors in preference to the payment of those tax moneys to the state by any person is prima facie evidence of an intent to fraudulently use those tax moneys.

**(12)** A person who negligently files an incorrect and excessive claim for a refund under s. 77.59 is subject to a penalty of 25 percent of the difference between the amount claimed and the amount that should have been claimed. A person who fraudulently files an incorrect claim for a refund under s. 77.59 is subject to a penalty of 100 percent of the difference between the amount claimed and the amount that should have been claimed.

**(13)** A person who uses any of the following documents in a manner that is prohibited by or inconsistent with this subchapter, or provides incorrect information to a seller or certified service provider related to the use of such documents or regarding an exemption to the taxes imposed under this subchapter, shall pay a penalty of $250 for each invoice or bill of sale related to the prohibited or inconsistent use or incorrect information:

(a) An exemption certificate described under ss. 77.52 (13) and 77.53 (10).

(b) A direct pay permit under s. 77.52 (17m).

(c) An exemption certificate claiming direct mail.

**History:** 1975 c. 39, 186; 1979 c. 110 s. 60 (13); 1979 c. 221, 230; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 399; 1991 a. 39, 269, 316; 1993 a. 16, 112, 408, 437; 1995 a. 27, 428; 1997 a. 237, 314; 1999 a. 9; 2009 a. 2; 2011 a. 68; 2013 a. 20.

The petitioner did not identify an equal protection problem when arguing that the absence of a limitations period in sub. (9), when compared with the general 4−year limitations period applicable to liability under s. 77.59 (3), lacked a rational basis. Rashaed v. Department of Revenue, 2014 WI App 7, 352 Wis. 2d 527, 842 N.W.2d 487, 13−0366.

**77.61 Administrative provisions. (1)** (a) No motor vehicle, boat, snowmobile, recreational vehicle, as defined in s. 340.01 (48r), trailer, semitrailer, all−terrain vehicle, utility terrain vehicle, off−highway motorcycle, or aircraft shall be registered or titled in this state unless the registrant presents proof that the sales or use taxes imposed by this subchapter have been paid.

(b) In the case of motor vehicles, boats, snowmobiles, recreational vehicles, as defined in s. 340.01 (48r), trailers, semitrailers, all−terrain vehicles, utility terrain vehicles, off−highway motorcycles, or aircraft purchased from a retailer, the registrant shall present proof that the tax has been paid to such retailer.

(c) In the case of motor vehicles, boats, snowmobiles, recreational vehicles, as defined in s. 340.01 (48r), trailers, semitrailers, all−terrain vehicles, utility terrain vehicles, off−highway motorcycles, or aircraft registered or titled, or required to be registered or titled, in this state purchased from persons who are not retailers, the purchaser shall file a sales tax return and pay the tax prior to registering or titling the motor vehicle, boat, snowmobile, recreational vehicle, as defined in s. 340.01 (48r), semitrailer, all−terrain vehicle, utility terrain vehicle, or aircraft in this state.

**(2)** In order to protect the revenue of the state:

(a) Except as provided in par. (b), the department may require any person who is or will be liable to it for the tax imposed by this subchapter to place with it, before or after a permit is issued, the security, not in excess of $15,000, that the department determines. In determining the amount of security to require under this subsection, the department may consider the person's payment of other taxes administered by the department and any other relevant facts. If any taxpayer fails or refuses to place that security, the department may refuse or revoke the permit. If any taxpayer is delinquent in the payment of the taxes imposed by this subchapter, the department may, upon 10 days' notice, recover the taxes, interest, costs and penalties from the security placed with the department by the taxpayer in the following order: costs, penalties, delinquent interest, delinquent tax. No interest may be paid or allowed by the state to any person for the deposit of security. Any security deposited under this subsection shall be returned to the taxpayer if the taxpayer has, for 24 consecutive months, complied with all the requirements of this subchapter.

(b) A certified service provider who has contracted with a seller, and filed an application, to collect and remit sales and use taxes imposed under this subchapter on behalf of the seller shall submit a surety bond to the department to guarantee the payment of sales and use taxes, including any penalty and interest on such payment. The department shall approve the form and contents of a bond submitted under this paragraph and shall determine the amount of such bond. The surety bond shall be submitted to the department within 60 days after the date on which the department notifies the certified service provider that the certified service provider is registered to collect sales and use taxes imposed under this subchapter. If the department determines, with regard to any one certified service provider, that no bond is necessary to protect the tax revenues of this state, the secretary of revenue or the secretary's designee may waive the requirements under this paragraph with regard to that certified service provider. Any bond submitted under this paragraph shall remain in force until the secretary of revenue or the secretary's designee releases the liability under the bond.

**(3m)** A retailer shall use a straight mathematical computation to determine the amount of the tax that the retailer may collect from the retailer's customers. The retailer shall calculate the tax amount by combining the applicable tax rates under this subchapter and subch. V and multiplying the combined tax rate by the sales price or purchase price of each item or invoice, as appropriate. The retailer shall calculate the tax amount to the 3rd decimal place, disregard tax amounts of less than 0.5 cent, and consider tax amounts of at least 0.5 cent but less than 1 cent to be an additional cent. The use of a straight mathematical computation, as provided in this subsection, shall not relieve the retailer from liability for payment of the full amount of the tax levied under this subchapter.

**(4)** (a) Every seller and retailer and every person storing, using or otherwise consuming in this state tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers and records, including machine−readable records, in such form as the department requires. The department may, after giving notice, require any person to keep whatever records are needed for the department to compute the sales or use taxes the person should pay. Thereafter, the department shall add to any taxes assessed on the basis of information not contained in the records required a penalty of 25 percent of the amount of the tax so assessed in addition to all other penalties under this chapter.

(c) For reporting the sales tax and collecting and reporting the use tax imposed on the retailer under s. 77.53 (3) and the accounting connected with it, retailers, not including certified service providers that receive compensation under s. 73.03 (61) (h), may deduct 0.5 percent of those taxes payable or $10 for that reporting period required under s. 77.58 (1) and not more than $1,000 for that reporting period, whichever is greater, but not more than the amount of the sales taxes or use taxes that is payable under ss. 77.52 and 77.53 (3) for that reporting period required under s. 77.58 (1), as administration expenses if the payment of the taxes is not delinquent. For purposes of calculating the retailer's discount under this paragraph, the taxes on retail sales reported by retailers under subch. V, including taxes collected and remitted as required under s. 77.785, shall be included if the payment of those taxes is not delinquent.

**(5)** (a) It is unlawful for the department or any person having an administrative duty under this subchapter to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof to be seen or examined by any person. This paragraph does not prohibit the department of revenue from publishing statistics classified so as not to disclose the identity of particular returns or reports and the items thereof. This paragraph does not prohibit employees or agents of the department of revenue from offering or submitting information obtained by investigation or any return or any schedule, exhibit or writing pertaining to a return or any copy of, or information derived from, any of those documents as evidence into the record of any contested matter involving the department in proceedings or litigation on state tax matters if that evidence has reasonable probative value. This paragraph does not prohibit employees or agents of the department of revenue from informing a buyer or seller who has filed a claim for a refund that a refund has been paid to a seller or buyer with respect to the same transaction.

(b) Subject to pars. (c) and (d) and to the rules of the department, any sales tax or use tax returns or any schedules, exhibits, writings or audit reports pertaining to the returns, on file with the department, shall be open to examination by any of the following persons or the contents thereof divulged or used as provided in the following cases and only to the extent therein authorized:

1. The secretary of revenue, or any officer, agent or employee of the department of revenue.

2. The attorney general and department of justice employees.

3. Members of the senate committee on organization or its authorized agents or the assembly committee on organization or its authorized agents provided the examination is approved by a majority vote of a quorum of its members and the tax return information is disclosed only in a meeting closed to the public. The committee may disclose tax return information to the senate or assembly or to other legislative committees if the information does not disclose the identity of particular returns or reports and the items of particular returns or reports. The department of revenue shall provide assistance to the committees or their authorized

agents in order to identify returns that are considered necessary by them to accomplish the review and analysis of tax policy.

4. Public officers of the federal government or other state governments or the authorized agents of those officers, where necessary in the administration of the laws of the federal government or other state governments, to the extent that the federal government or other state governments accord similar rights of examination or information to officials of this state.

5. a. The person who filed or submitted the return, or to whom the return relates or by that person's authorized agent or attorney.

b. The person required to file reports on collection or taxes withheld from another.

6. Any person examining a return pursuant to a court order duly obtained upon a showing to the court that the information contained in the return is relevant to a pending court action or pursuant to a subpoena signed by a judge of a court of record ordering the department's custodian of returns to produce a return in open court in a court action pending before the judge.

7. Any person against whom the department asserts liability under this subchapter, including a successor, guarantor or surety.

8. Employees of this state, to the extent that the department deems the examination necessary for the employees to perform their duties under contracts or agreements between the department and any other department, division, bureau, board or commission of this state relating to the administration of tax laws.

9. The administrator of the lottery division in the department for the purpose of withholding of lottery winnings under s. 565.30 (5).

10. A licensing department or the supreme court, if the supreme court agrees, for the purpose of denial, nonrenewal, discontinuation and revocation of a license based on tax delinquency under s. 73.0301.

11. The department of children and families or a county child support agency under s. 59.53 (5) in response to a request under s. 49.22 (2m).

12. The secretary of revenue and employees of that department for the purposes of preparing and maintaining the list of persons with unpaid tax obligations as described in s. 73.03 (62) so that the list of such persons is available for public inspection.

13. For purposes of obtaining the outstanding liability secured by a tax warrant, any person, or authorized agent of any person, who provides satisfactory evidence to the department, as determined by the department, that the person has a material interest, or intends to obtain a material interest, in a property that is subject to a tax warrant filed by the department under s. 77.62 (1).

(c) Copies of sales tax or use tax returns, schedules, exhibits, writings or audit reports shall not be furnished to the persons listed under par. (b), except persons under par. (b) 5. or under an agreement between the department and another agency of government.

(d) The use of information obtained under par. (b) or (c) is restricted to the discharge of duties imposed upon the persons by law or by the duties of their office or by order of a court as specified under par. (b) 6.

(e) The department may charge for the reasonable cost of divulging information under this subsection.

(f) District attorneys may examine tax information of persons on file with the department of revenue as follows:

1. Such tax information may be examined for use in preparation for any judicial proceeding or any investigation which may result in a judicial proceeding involving sales or use tax if:

a. The taxpayer is or may be a party to such proceeding;

b. The treatment of an item reflected in such tax information is or may be related to the resolution of an issue in the proceeding or investigation; or

c. The tax information relates or may relate to a transactional relationship between the taxpayer and a person who is or may be a party to the proceeding which affects or may affect the resolution of an issue in such proceeding or investigation.

2. When the department of revenue allows examination of tax information under subd. 1.:

a. If the department has referred the case to a district attorney, the department may make disclosure on its own motion.

b. If a district attorney requests examination of tax information relating to a person, the request must be in writing, clearly identify the requester and the person to whom the information relates and explain the need for the information. The department may then allow the examination of tax information so requested and the information may be examined and used solely for the proceeding or investigation for which it was requested.

3. Such tax information may be examined for use in preparation for any administrative or judicial proceeding or an investigation which may result in such proceeding pertaining to the enforcement of a specifically designated state criminal statute not involving tax administration to which this state or a governmental subdivision thereof is a party. Such tax information may be used solely for the proceeding or investigation for which it is requested.

4. The department of revenue may allow an examination of tax information under subd. 3. only if a district attorney petitions a court of record in this state for an order allowing the examination and the court issues an order after finding:

a. There is a reasonable cause to believe, based on information believed to be reliable, that a specific criminal act has been committed;

b. There is reason to believe that such tax information is probative evidence of a matter in issue related to the commission of such criminal act; and

c. The information sought to be examined cannot reasonably be obtained from any other source, unless it is determined that, notwithstanding the reasonable availability of the information from another source, the tax information constitutes the most probative evidence of a matter in issue relating to the commission of such criminal act.

5. If the department determines that examination of tax information ordered under subd. 4. would identify a confidential informant or seriously impair a civil or criminal tax investigation, the department may deny access and shall certify the reason therefor to the court.

(fm) The department of revenue shall inform each requester of the amount paid or payable under s. 77.52 for any reporting period and reported on a return filed by any city, village, town, county, school district, special purpose district or technical college district; whether that amount was paid by the statutory due date; the amount of any tax, fees, penalties or interest assessed by the department; and the total amount due or assessed under s. 77.52 but unpaid by the filer, except that the department may not divulge tax return information that in the department's opinion violates the confidentiality of that information with respect to any person other than the units of government and districts specified in this paragraph. The department shall provide to the requester a written explanation if it fails to divulge information on grounds of confidentiality. The department shall collect from the person requesting the information a fee of $4 for each return.

(g) Any person violating this subsection may be fined not less than $100 nor more than $500, or imprisoned not less than one month nor more than 6 months, or both.

**Cross−reference:** See also ss. Tax 1.11 and 1.13, Wis. adm. code.

**(5m)** (a) In this subsection, "personally identifiable information" means any information that identifies a person.

(b) A certified service provider may use personally identifiable information as necessary only for the administration of its system to perform a seller's sales and use tax functions and shall provide consumers clear and conspicuous notice of its practice regarding such information, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information, and under what circumstances it discloses the information to states participating in the agreement, as defined in s. 77.65 (2) (a).

(c) A certified service provider may collect, use, and retain personally identifiable information only to verify exemption claims, to document the correct assignment of taxing jurisdictions, to investigate fraud, and to ensure its system's reliability.

(d) A certified service provider shall provide sufficient technical, physical, and administrative safeguards to protect personally identifiable information from unauthorized access and disclosure.

(e) For purposes of this subchapter, the state shall provide to consumers public notice of the state's practices related to collecting, using, and retaining personally identifiable information.

(f) The state shall not retain personally identifiable information obtained for purposes of administering this subchapter unless the state is otherwise required to retain the information by law or as provided under the agreement, as defined in s. 77.65 (2) (a).

(g) For purposes of this subchapter, the state shall provide an individual reasonable access to that individual's personally identifiable information and the right to correct any inaccurately recorded information.

(h) If any person, other than another state that is a signatory to the agreement, as defined in s. 77.65 (2) (a), or a person authorized under state law to access the information, requests access to an individual's personally identifiable information, the state shall make a reasonable and timely effort to notify the individual of the request.

**(6)** (a) No person, except the person who filed the return or claim, may inspect a return or claim, or any information derived from a return or claim, that is filed under this subchapter unless that person does so in performing the duties of his or her position. Violation of this paragraph by a state employee is grounds for dismissal.

(b) If any person is charged with a violation of par. (a), the secretary of revenue shall notify each taxpayer whose return or claim was improperly inspected by that person.

(c) Any person who is notified under par. (b) may bring an action for damages in regard to the inspection.

(d) Any person who violates par. (a) shall upon conviction be fined not less than $100 nor more than $500 or imprisoned for not less than one month nor more than 6 months or both.

**(8)** In any case in which a refund is authorized or prescribed in this subchapter, or in the rules of the department related to the administration hereof, no such refund shall be made if the total amount thereof is less than $2 unless specifically requested on the appropriate form designated by the department.

**(9)** The department may by rule require the filing, submission, preparation or retention of such information returns, exemption and resale certificates and other forms, reports and data as it requires for the proper administration of this subchapter. Any person who fails or refuses to file, submit, prepare or retain such returns, certificates, forms, reports or data, at the time and place and in the manner required, is guilty of a misdemeanor for each such failure or refusal.

**(11)** Any city, village or town clerk or other official whose duty it is to issue licenses or permits to engage in a business involving the sale at retail of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) subject to tax under this subchapter, or the furnishing of services so subject to tax, shall, before issuing such license or permit, require proof that the person to whom such license or permit is to be issued is the holder of a seller's permit or use tax registration certificate, is registered to collect, report, and remit use tax under this subchapter, or has been informed by an employee of the department that the department will issue a seller's permit or use tax registration certificate to that person or register that person to collect, report, and remit use tax. In the case of a single−owner entity that is disregarded as a separate entity under ch. 71, the requirement to hold a seller's permit is satisfied if the seller's permit is in the name of either the disregarded entity or its owner.

**(12)** (a) No natural person shall be excused from testifying or from producing any books, papers, records or memoranda in any investigation, or upon any hearing when ordered to do so by the secretary of revenue or the secretary's designee upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate or subject the person to criminal penalty, but no such natural person so ordered shall be prosecuted or subjected to any criminal penalty for, or on account of such testimony or books, papers, records or memoranda which the person produces upon such investigation or hearing. No person so testifying shall be exempt from prosecution and punishment for perjury in so testifying.

(b) The immunity provided under par. (a) is subject to the restrictions under s. 972.085.

**(13)** No injunction shall issue to stay proceedings for assessment or collection of any taxes levied under this subchapter.

**(14)** Documents and payments required or permitted under this subchapter that are mailed are timely furnished, filed or made if they are mailed in a properly addressed envelope with the postage duly prepaid, if the envelope is postmarked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight of the due date and if the document or payment is received by the department, or at the destination that the department prescribes, within 5 days after the prescribed date. Documents and payments that are not mailed are timely if they are received on or before the due date by the department or at the destination that the department designates. For purposes of this subsection, "mailed" includes delivery by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

**(15)** Notwithstanding any provision of ss. 178.1141 to 178.1145, 179.76, 180.1161, 181.1161, and 183.1207, a business entity that converts to another business entity under s. 178.1141, 179.76, 180.1161, 181.1161, or 183.1207 shall be subject to the provisions under this subchapter applicable to liquidations, reorganizations, and business entity formations.

**(16)** Any person who remits taxes and files returns under this subchapter may designate an agent, as defined in s. 77.524 (1) (ag), to remit such taxes and file such returns with the department in a manner prescribed by the department.

**(17)** With regard to services subject to the tax under s. 77.52 (2) or the lease, rental, or license of tangible personal property and property, items, and goods specified under s. 77.52 (1) (b), (c), and (d), an increase in the tax rate applies to the first billing period beginning on or after the rate increase's effective date and a decrease in the tax rate applies to bills that are rendered on or after the rate decrease's effective date.

**(18)** The department shall notify sellers with respect to any change in the rate of the taxes imposed under this subchapter at least 30 days prior to the change's effective date and any such change shall take effect on January 1, April 1, July 1, or October 1.

**(19)** (a) A person who fails to produce records or documents, as provided under s. 77.59 (2), that support amounts or other information required to be shown on a return required under s. 77.58 and fails to comply in good faith with a summons issued pursuant to s. 73.03 (9) seeking those records and documents may be subject to any of the following penalties, as determined by the department, except that the department may not impose a penalty under this subsection if the person shows that under all facts and circumstances the person's response, or failure to respond, to the department's request was reasonable or justified by factors beyond the person's control:

1. The disallowance of deductions, credits, exemptions, or inclusions of additional taxable sales or additional taxable purchases to which the requested records relate.

2. A penalty for each violation of this subsection that is equal to the greater of $500 or 25 percent of the amount of the additional

tax on any adjustment made by the department that results from the person's failure to produce the records.

(c) The department shall promulgate rules to administer this subsection and the rules shall include a standard response time, a standard for noncompliance, and penalty waiver provisions.

**Cross−reference:** See also s. Tax 11.90, Wis. adm. code.

**(19m)** (a) A single−owner entity that is disregarded as a separate entity under ch. 71 is disregarded as a separate entity for purposes of this subchapter.

(b) A single−owner entity that is disregarded as a separate entity under ch. 71 on July 1, 2009, shall be treated under this subchapter as an entity separate from its owner for purposes of the sale, license, lease, or rental of and the storage, use, or other consumption of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) purchased by the single−owner entity or its owner prior to July 1, 2009.

(c) A single−owner entity that is disregarded as a separate entity under ch. 71 on July 1, 2009, shall be treated under this subchapter as an entity separate from its owner for purchases of building materials, if the materials are affixed and made a structural part of real estate, and the amount payable to the contractor is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to July 1, 2009, or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before July 1, 2009.

**(20)** The sale, license, lease, or rental of a product may be taxed only once under this subchapter regardless of whether such sale, license, lease, or rental is subject to taxation under more than one imposition provision under this subchapter.

**History:** 1971 c. 125; 1975 c. 186, 224; 1977 c. 29, 200, 418; 1979 c. 89, 125, 174; 1981 c. 20; 1983 a. 189 s. 329 (12); 1983 a. 405; 1983 a. 544 s. 47 (1); 1985 a. 29, 41; 1987 a. 27, 92, 119, 246; 1989 a. 31, 122, 359; 1991 a. 39, 269, 316; 1993 a. 205, 399; 1995 a. 27, 233, 280; 1997 a. 27, 191, 237; 1999 a. 83; 2001 a. 44, 103; 2005 a. 25, 49; 2007 a. 11, 20; 2009 a. 2, 28, 276; 2011 a. 68, 208; 2015 a. 170; s. 2015 a. 197 s. 51; s. 2015 a. 216, 218, 295.

Since the immunity under s. 885.25 (2) or sub. (12) is merely coextensive with a defendant's rights against self−incrimination, which does not attach to the records of a corporation, a defendants' claim of immunity for delivering corporate records has no merit. State v. Alioto, 64 Wis. 2d 354, 219 N.W.2d 585 (1974).

**77.62 Collection of delinquent sales and use taxes.** The department of revenue may exercise the powers vested in it by ss. 71.80 (12), 71.82 (2), 71.91 (1) (a) and (c), (2) to (7), 71.92 and 73.0301 in connection with collection of delinquent sales and use taxes including, without limitation because of enumeration, the power incorporated by reference in s. 71.91 (5) (j), and the power to:

**(1)** Use the warrant procedures under ss. 71.80 (12), 71.91 (1) (a) and (c) and (2) to (5m) and 71.92.

**(2)** Release real property from the lien of a warrant.

**(3)** Satisfy warrants.

**(4)** Approve installment payment agreements.

**(5)** Compromise on the basis of ability to pay.

**(6)** Compromise delinquent estimated assessments on the basis of fairness and equity.

**History:** 1975 c. 224; 1987 a. 312 s. 17; 1995 a. 233; 1997 a. 237; 1999 a. 83; 2013 a. 20.

**Cross−reference:** See s. 73.03 (27) for provision as to writing off uncollectible sales and use taxes.

**77.63 Collection compensation.** The following persons may retain a portion of sales and use taxes collected on retail sales under this subchapter and subch. V in an amount determined by the department and by contracts that the department enters into jointly with other states as a member state of the streamlined sales tax governing board pursuant to the agreement, as defined in s. 77.65 (2) (a):

**(1)** A certified service provider.

**(2)** A seller that uses a certified automated system, as defined in s. 77.524 (1) (am).

**(3)** A seller that sells tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services in at least 5 states that are signatories to the agreement, as defined in s. 77.65 (2) (a); that has total annual sales revenue of at least $500,000,000; that has a proprietary system that calculates the amount of tax owed to each taxing jurisdiction in which the seller sells tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services; and that has entered into a performance agreement with the states that are signatories to the agreement, as defined in s. 77.65 (2) (a). For purposes of this subsection, "seller" includes an affiliated group of sellers using the same proprietary system to calculate the amount of tax owed in each taxing jurisdiction in which the sellers sell tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services.

**History:** 2009 a. 2.

**77.65 Uniform sales and use tax administration.** **(1)** SHORT TITLE. This section shall be known as the "Uniform Sales and Use Tax Administration Act."

**(2)** DEFINITIONS. In this section:

(a) "Agreement" means the streamlined sales and use tax agreement, including amendments to the agreement.

(b) "Department" means the department of revenue.

(d) "Sales tax" means the tax imposed under ss. 77.52, 77.57, and 77.71 (1).

(e) "Seller" means any person who sells, licenses, leases, or rents tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services.

(f) "State" means any state of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(g) "Use tax" means the tax imposed under ss. 77.53 and 77.71 (2), (3), (4), and (5).

**(3)** DEPARTMENT AUTHORITY. The department may enter into the agreement to simplify and modernize sales tax and use tax administration in order to substantially reduce the tax compliance burden for all sellers and for all types of commerce. The department may act jointly with other states that are signatories to the agreement to establish standards for the certification of a certified service provider and certified automated system and to establish performance standards for multistate sellers. The department may promulgate rules to administer this section, may procure jointly with other states that are signatories to the agreement goods and services in furtherance of the agreement, and may take other actions reasonably required to implement this section. The secretary of revenue or the secretary's designee may represent this state before the states that are signatories to the agreement.

**(4)** AGREEMENT REQUIREMENTS. The department may not enter into the agreement unless the agreement requires that a state that is a signatory to the agreement do all of the following:

(a) Limit the number of state sales and use tax rates.

(b) Limit the application of any maximums on the amount of state sales and use tax that is due on a transaction.

(c) Limit thresholds on the application of sales and use tax.

(d) Establish uniform standards for the sourcing of transactions to the appropriate taxing jurisdictions, for administering exempt sales, and for sales and use tax returns and remittances.

(e) Develop and adopt uniform definitions related to sales and use tax.

(f) Provide, with all states that are signatories to the agreement, a central electronic registration system that allows a seller to register to collect and remit sales and use taxes for all states that are signatories to the agreement.

(fm) Provide that a seller who registers with the central electronic registration system under par. (f) may cancel the registration at any time, as provided under uniform procedures adopted by the governing board of the states that are signatories to the

agreement, but is required to remit any Wisconsin taxes collected pursuant to the agreement to the department.

(g) Provide that the state shall not use a seller's registration with the central electronic registration system under par. (f), and the subsequent collection and remittance of sales and use taxes in the states that are signatories to the agreement, to determine whether the seller has sufficient connection with the state for the purpose of imposing any tax.

(h) Restrict variances between the state tax bases and local tax bases.

(i) Administer all sales and use taxes imposed by local jurisdictions within the state so that sellers who collect and remit such taxes are not required to register with, or submit returns or taxes to, local jurisdictions and are not subject to audits by local jurisdictions.

(j) Restrict the frequency of changes in any local sales and use tax rates and provide notice of any such changes.

(k) Establish effective dates for the application of local jurisdictional boundary changes to local sales and use tax rates and provide notice of any such changes.

(L) Provide monetary allowances to sellers and certified service providers as outlined in the agreement.

(m) Certify compliance with the agreement before entering into the agreement and maintain compliance with the agreement.

(n) Adopt a uniform policy, with the states that are signatories to the agreement, for certified service providers that protects a consumer's privacy and maintains tax information confidentiality.

(o) Appoint, with the states that are signatories to the agreement, an advisory council to consult with in administering the agreement. The advisory council shall consist of private sector representatives and representatives from states that are not signatories to the agreement.

**(5)** COOPERATING STATES. The agreement entered into under this section is an accord among cooperating states to further their governmental functions and provides a mechanism among the cooperating states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes that are imposed by each state that is a signatory to the agreement.

**(6)** LIMITED BINDING AND BENEFICIAL EFFECT. (a) The agreement entered into under this section binds, and inures to the benefit of, only the states that are signatories to the agreement. Any benefit that a person may receive from the agreement is established by this state's law and not by the terms of the agreement.

(b) No person shall have any cause of action or defense under the agreement or because of the department entering into the agreement. No person may challenge any action or inaction by any department, agency, other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

(c) No law of this state, or the application of such law, may be declared invalid on the ground that the law, or the application of such law, is inconsistent with the agreement.

**(7)** RELATIONSHIP TO STATE LAW. No provision of the agreement in whole or in part invalidates or amends any law of this state and the state becoming a signatory to the agreement shall not amend or modify any law of this state.

**History:** 2001 a. 16; 2009 a. 2; 2015 a. 216.

**77.66 Certification for collection of sales and use tax.** The secretary of revenue shall determine and periodically certify to the secretary of administration the names of persons, and affiliates, as defined in s. 16.70 (1b), of persons, who make sales of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), and taxable services that are subject to the taxes imposed under this subchapter but who are not registered to collect and remit such taxes to the department or, if registered, do not collect and remit such taxes.

**History:** 2003 a. 33; 2009 a. 2.

**77.67 Amnesty for new registrants. (1)** A seller is not liable for uncollected and unpaid taxes, including penalties and interest, imposed under this subchapter and subch. V on sales made to purchasers in this state before the seller registers under par. (a), if all of the following apply:

(a) The seller registers with the department, in a manner that the department prescribes, to collect and remit the taxes imposed under this subchapter and subch. V on sales to purchasers in this state in accordance with the agreement, as defined in s. 77.65 (2) (a).

(b) The seller registers under par. (a) no later than 365 days after the effective date of this state's participation in the agreement under s. 77.65 (2) (a), as determined by the department.

(c) The seller was not registered to collect and remit the taxes imposed under this subchapter and subch. V during the 365 consecutive days immediately before the effective date of this state's participation in the agreement under s. 77.65 (2) (a), as determined by the department.

(d) The seller has not received a notice of the commencement of an audit from the department or, if the seller has received a notice of the commencement of an audit from the department, the audit has been fully resolved, including any related administrative and judicial processes, at the time that the seller registers under par. (a).

(e) The seller has not committed or been involved in a fraud or an intentional misrepresentation of a material fact.

(f) The seller collects and remits the taxes imposed under this subchapter and subch. V on sales to purchasers in this state for at least 3 consecutive years after the date on which the seller's collection obligation begins.

**(2)** Subsection (1) does not apply to taxes imposed under this subchapter and subch. V that are due from the seller for purchases made by the seller.

**History:** 2009 a. 2.

## SUBCHAPTER V

## COUNTY AND SPECIAL DISTRICT SALES AND USE TAXES

**77.70 Adoption by county ordinance.** Any county desiring to impose county sales and use taxes under this subchapter may do so by the adoption of an ordinance, stating its purpose and referring to this subchapter. The rate of the tax imposed under this section is 0.5 percent of the sales price or purchase price. The county sales and use taxes may be imposed only for the purpose of directly reducing the property tax levy and only in their entirety as provided in this subchapter. That ordinance shall be effective on the first day of January, the first day of April, the first day of July or the first day of October. A certified copy of that ordinance shall be delivered to the secretary of revenue at least 120 days prior to its effective date. The repeal of any such ordinance shall be effective on December 31. A certified copy of a repeal ordinance shall be delivered to the secretary of revenue at least 120 days before the effective date of the repeal.

**History:** 1985 a. 41, 120; 1987 a. 27; 1991 a. 39; 2009 a. 2, 28; 2015 a. 197 s. 50.

A county may not impose a tax upon admissions to amusements except as part of a general sales and use tax at the statutorily prescribed rate of one−half of 1 percent. 58 Atty. Gen. 212.

A county board may not control municipal use of county sales tax revenue. 60 Atty. Gen. 387.

Funds received from a county sales and use tax may be budgeted by the county board to reduce the amount of the county wide property tax levy or to defray the cost of any item that can be funded by a county−wide property tax. OAG 1−98.

**77.705 Adoption by resolution; baseball park district.** A local professional baseball park district created under subch. III

of ch. 229, by resolution under s. 229.68 (15), may impose a sales tax and a use tax under this subchapter at a rate of no more than 0.1 percent of the sales price or purchase price. Those taxes may be imposed only in their entirety. The resolution shall be effective on the first January 1, April 1, July 1, or October 1 that begins at least 120 days after the adoption of the resolution. Any moneys transferred from the appropriation account under s. 20.566 (1) (gd) to the appropriation account under s. 20.835 (4) (gb) shall be used exclusively to retire the district's debt. Any moneys received under s. 341.14 (6r) (b) 13. b. and credited to the appropriation account under s. 20.835 (4) (gb) shall be used exclusively to retire the district's debt.

**History:** 1995 a. 56; 1999 a. 167; 2005 a. 25; 2009 a. 2, 28.

**77.706 Adoption by resolution; football stadium district.** A local professional football stadium district created under subch. IV of ch. 229, by resolution under s. 229.824 (15), may impose a sales tax and a use tax under this subchapter at a rate of 0.5 percent of the sales price or purchase price. Those taxes may be imposed only in their entirety. The imposition of the taxes under this section shall be effective on the first January 1, April 1, July 1, or October 1 that begins at least 120 days after the certification of the approval of the resolution by the electors in the district's jurisdiction under s. 229.824 (15). Any moneys transferred from the appropriation account under s. 20.566 (1) (ge) to the appropriation account under s. 20.835 (4) (ge) shall be used exclusively to retire the district's debt.

**History:** 1999 a. 167; 2005 a. 25; 2009 a. 2.

**77.707 Sunset. (1)** Retailers and the department of revenue may not collect a tax under s. 77.705 for any local professional baseball park district created under subch. III of ch. 229 after the last day of the calendar quarter that is at least 120 days from the date on which the local professional baseball park district board makes a certification to the department of revenue under s. 229.685 (2), except that the department of revenue may collect from retailers taxes that accrued before the day after the last day of that calendar quarter and fees, interest and penalties that relate to those taxes.

**(2)** Retailers and the department of revenue may not collect a tax under s. 77.706 for any local professional football stadium district created under subch. IV of ch. 229 after the last day of the calendar quarter that is at least 120 days from the date on which the local professional football stadium district board makes all of the certifications to the department of revenue under s. 229.825 (3), except that the department of revenue may collect from retailers taxes that accrued before the day after the last day of that calendar quarter and fees, interest and penalties that relate to those taxes.

**History:** 1995 a. 56; 1999 a. 167; 2009 a. 2.

**77.71 Imposition of county and special district sales and use taxes.** Whenever a county sales and use tax ordinance is adopted under s. 77.70 or a special district resolution is adopted under s. 77.705 or 77.706, the following taxes are imposed:

**(1)** For the privilege of selling, licensing, leasing, or renting tangible personal property and the items, property, and goods specified under s. 77.52 (1) (b), (c), and (d), and for the privilege of selling, licensing, performing, or furnishing services a sales tax is imposed upon retailers at the rates under s. 77.70 in the case of a county tax or at the rate under s. 77.705 or 77.706 in the case of a special district tax of the sales price from the sale, license, lease, or rental of tangible personal property and the items, property, and goods specified under s. 77.52 (1) (b), (c), and (d), except property taxed under sub. (4), sold, licensed, leased, or rented at retail in the county or special district, or from selling, licensing, performing, or furnishing services described under s. 77.52 (2) in the county or special district.

**(2)** An excise tax is imposed at the rates under s. 77.70 in the case of a county tax or at the rate under s. 77.705 or 77.706 in the case of a special district tax of the purchase price upon every person storing, using, or otherwise consuming in the county or special district tangible personal property, or items, property, or goods specified under s. 77.52 (1) (b), (c), or (d), or services if the tangible personal property, item, property, good, or service is subject to the state use tax under s. 77.53, except that a receipt indicating that the tax under sub. (1), (3), (4), or (5) has been paid relieves the buyer of liability for the tax under this subsection and except that if the buyer has paid a similar local tax in another state on a purchase of the same tangible personal property, item, property, good, or service that tax shall be credited against the tax under this subsection and except that for motor vehicles that are used for a purpose in addition to retention, demonstration, or display while held for sale in the regular course of business by a dealer the tax under this subsection is imposed not on the purchase price but on the amount under s. 77.53 (1m).

**(3)** An excise tax is imposed upon a contractor engaged in construction activities within the county or special district at the rates under s. 77.70 in the case of a county tax or at the rate under s. 77.705 or 77.706 in the case of a special district tax of the purchase price of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) that are used in constructing, altering, repairing, or improving real property and that became a component part of real property in that county or special district, except that if the contractor has paid the sales tax of a county or special district in this state on that tangible personal property, item, property, or good, or has paid a similar local sales tax in another state on a purchase of the same tangible personal property, item, property, or good, that tax shall be credited against the tax under this subsection.

**(4)** An excise tax is imposed at the rates under s. 77.70 in the case of a county tax or at the rate under s. 77.705 or 77.706 in the case of a special district tax of the purchase price upon every person storing, using, or otherwise consuming a motor vehicle, boat, recreational vehicle, as defined in s. 340.01 (48r), or aircraft if that property must be registered or titled with this state and if that property is to be customarily kept in a county that has in effect an ordinance under s. 77.70 or in a special district that has in effect a resolution under s. 77.705 or 77.706, except that if the buyer has paid a similar local sales tax in another state on a purchase of the same property, that tax shall be credited against the tax under this subsection. The lease or rental of a motor vehicle, boat, recreational vehicle, as defined in s. 340.01 (48r), or aircraft is not taxed under this subsection if the lease or rental does not require recurring periodic payments.

**(5)** An excise tax is imposed on the purchase price for the lease or rental of a motor vehicle, boat, recreational vehicle, as defined in s. 340.01 (48r), or aircraft at the rates under s. 77.70 in the case of a county tax or at the rate under s. 77.705 or 77.706 in the case of a special district tax upon every person storing, using, or otherwise consuming in the county or special district the motor vehicle, boat, recreational vehicle, as defined in s. 340.01 (48r), or aircraft if that property must be registered or titled with this state and if the lease or rental does not require recurring periodic payments, except that a receipt indicating that the tax under sub. (1) had been paid relieves the purchaser of liability for the tax under this subsection and except that if the purchaser has paid a similar local tax in another state on the same lease or rental of such motor vehicle, boat, recreational vehicle, as defined in s. 340.01 (48r), or aircraft, that tax shall be credited against the tax under this subsection.

**History:** 1985 a. 41; 1987 a. 27; 1995 a. 27, 56; 1999 a. 167; 2007 a. 11; 2009 a. 2, 28; 2011 a. 32; 2015 a. 216.

**77.72 General rule.** For the purposes of this subchapter, all retail sales of tangible personal property, and items, property, and goods specified under s. 77.52 (1) (b), (c), and (d), and taxable services are sourced as provided in s. 77.522.

**History:** 1985 a. 41; 2001 a. 109; 2009 a. 2.

**77.73 Jurisdiction to tax. (2)** Counties and special districts do not have jurisdiction to impose the tax under s. 77.71 (2) in regard to items, property, and goods under s. 77.52 (1) (b), (c), and (d), and tangible personal property, except snowmobiles, trailers,

semitrailers, limited use off−highway motorcycles, as defined in s. 23.335 (1) (o), all−terrain vehicles, and utility terrain vehicles, purchased in a sale that is consummated in another county or special district in this state that does not have in effect an ordinance or resolution imposing the taxes under this subchapter and later brought by the buyer into the county or special district that has imposed a tax under s. 77.71 (2).

**(2m)** Counties and special districts do not have jurisdiction to impose the tax under s. 77.71 (5) with regard to the lease or rental of a motor vehicle, boat, recreational vehicle, as defined in s. 340.01 (48r), or aircraft if the lease or rental does not require recurring periodic payments and if the purchaser received the property in another county or special district in this state and then brings the property into a county or special district that imposes the tax under s. 77.71 (5).

**(3)** Counties and special districts have jurisdiction to impose the taxes under this subchapter on retailers who file, or who are required to file, an application under s. 77.52 (7) or who register, or who are required to register, under s. 77.53 (9) or (9m), regardless of whether such retailers are engaged in business in the county or special district, as provided in s. 77.51 (13g). A retailer who files, or is required to file, an application under s. 77.52 (7) or who registers, or is required to register, under s. 77.53 (9) or (9m) shall collect, report, and remit to the department the taxes imposed under this subchapter for all counties or special districts that have an ordinance or resolution imposing the taxes under this subchapter.

**History:** 1985 a. 41; 1995 a. 56; 2009 a. 2, 28; 2011 a. 32, 208; 2015 a. 170, 216.

**77.74 Seller permits.** An additional seller's permit shall not be required of any retailer who has been issued a permit under subch. III.

**77.75 Reports.** Every person subject to county or special district sales and use taxes shall, for each reporting period, record that person's sales made in the county or special district that has imposed those taxes separately from sales made elsewhere in this state and file a report as prescribed by the department of revenue.

**History:** 1985 a. 41; 1995 a. 56; 1997 a. 27; 2009 a. 2, 28; 2011 a. 32.

**77.76 Administration. (1)** The department of revenue shall have full power to levy, enforce, and collect county and special district sales and use taxes and may take any action, conduct any proceeding, impose interest and penalties, and in all respects proceed as it is authorized to proceed for the taxes imposed by subch. III. The department of transportation and the department of natural resources may administer the county and special district sales and use taxes in regard to items under s. 77.61 (1).

**(2)** Judicial and administrative review of departmental determinations shall be as provided in subch. III for state sales and use taxes, and no county or special district may intervene in any matter related to the levy, enforcement, and collection of the taxes under this subchapter.

**(3)** From the appropriation under s. 20.835 (4) (g) the department shall distribute 98.25 percent of the county taxes reported for each enacting county, minus the county portion of the retailers' discounts, to the county and shall indicate the taxes reported by each taxpayer, no later than 75 days following the last day of the calendar quarter in which such amounts were reported. In this subsection, the "county portion of the retailers' discount" is the amount determined by multiplying the total retailers' discount by a fraction the numerator of which is the gross county sales and use taxes payable and the denominator of which is the sum of the gross state and county sales and use taxes payable. The county taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments and all other adjustments of the county taxes previously distributed. Interest paid on refunds of county sales and use taxes shall be paid from the appropriation under s. 20.835 (4) (g) at the rate paid by this state under s. 77.60 (1) (a). The county may retain the amount it receives or it may distribute all or a portion of the amount it receives to the towns, villages, cities and school districts in the county. Any county receiving a report under this subsection is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5) and (6).

**(3m)** From the appropriation under s. 20.835 (4) (gb) the department, for the first 2 years of collection, shall distribute 97 percent of the taxes reported for each local professional baseball park district that has imposed taxes under this subchapter, minus the district portion of the retailers' discounts, to the local professional baseball park district no later than the end of the 3rd month following the end of the calendar quarter in which such amounts were reported. From the appropriation under s. 20.835 (4) (gb) the department, after the first 2 years of collection, shall distribute 98.5 percent of the taxes reported for each local professional baseball park district that has imposed taxes under this subchapter, minus the district portion of the retailers' discount, to the local professional baseball park district no later than the end of the 3rd month following the end of the calendar quarter in which such amounts were reported. At the time of distribution the department shall indicate the taxes reported by each taxpayer. In this subsection, the "district portion of the retailers' discount" is the amount determined by multiplying the total retailers' discount by a fraction the numerator of which is the gross local professional baseball park district sales and use taxes payable and the denominator of which is the sum of the gross state and local professional baseball park district sales and use taxes payable. The local professional baseball park district taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments and all other adjustments of the local professional baseball park district taxes previously distributed. Interest paid on refunds of local professional baseball park district sales and use taxes shall be paid from the appropriation under s. 20.835 (4) (gb) at the rate paid by this state under s. 77.60 (1) (a). Any local professional baseball park district receiving a report under this subsection is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5) and (6).

**(3p)** Except as provided in sub. (5), from the appropriation under s. 20.835 (4) (ge) the department of revenue shall distribute 98.5 percent of the taxes reported for each local professional football stadium district that has imposed taxes under this subchapter, minus the district portion of the retailers' discount, to the local professional football stadium district no later than the end of the 3rd month following the end of the calendar quarter in which such amounts were reported. At the time of distribution the department of revenue shall indicate the taxes reported by each taxpayer. In this subsection, the "district portion of the retailers' discount" is the amount determined by multiplying the total retailers' discount by a fraction the numerator of which is the gross local professional football stadium district sales and use taxes payable and the denominator of which is the sum of the gross state and local professional football stadium district sales and use taxes payable. The local professional football stadium district taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments and all other adjustments of the local professional football stadium district taxes previously distributed. Interest paid on refunds of local professional football stadium district sales and use taxes shall be paid from the appropriation under s. 20.835 (4) (ge) at the rate paid by this state under s. 77.60 (1) (a). Any local professional football stadium district receiving a report under this subsection is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5) and (6).

**(4)** There shall be retained by the state 1.5 percent of the taxes collected for taxes imposed by special districts under ss. 77.705 and 77.706 and 1.75 percent of the taxes collected for taxes imposed by counties under s. 77.70 to cover costs incurred by the state in administering, enforcing, and collecting the tax. All inter-

est and penalties collected shall be deposited and retained by this state in the general fund.

**(5)** (a) If a local professional football stadium district in Brown County makes all the certifications to the department of revenue under s. 229.825 (3), the department shall distribute the taxes imposed by or collected for the district under s. 77.706 from April 1, 2015, to September 30, 2015, as follows, excluding taxes reported to the department before April 1, 2015, that the department paid to the district:

1. Twenty−five percent of such taxes to Brown County.

2. Seventy−five percent of such taxes to the cities, villages, and towns in Brown County in proportion to the population of each such city, village, and town in the county compared to the county's entire population. For purposes of this subdivision, the department shall use the population determined under s. 16.96 for the county and for each city, village, and town in the county.

(b) 1. Brown County shall deposit the revenue received under par. (a) 1. into a segregated account established and controlled by the county to use only for the purpose of redeveloping the Brown County arena and land on which the arena is located. The county may not make expenditures from the segregated account unless the county board adopts a resolution specifying the purpose for which the revenues will be spent and the amount of the revenues to be spent for that purpose.

2. Each municipality that receives revenue under par. (a) 2. shall deposit the revenue into a segregated account established and controlled by the municipality to use only for the purpose of providing property tax relief, tax levy supported debt relief, or economic development. A municipality may not make expenditures from the segregated account unless the municipality's governing body adopts a resolution specifying the purpose for which the revenues will be spent and the amount of the revenues to be spent for that purpose.

(c) If the local professional football stadium district receives from the department any of the taxes imposed by or collected for the district under s. 77.706 from April 1, 2015, to September 30, 2015, excluding taxes reported to the department before April 1, 2015, that the department paid to the district, the district shall return those taxes to the department, in the manner prescribed by the department, so that the department may distribute the taxes as provided in par. (a).

(d) The department shall distribute, as provided under par. (a), the taxes imposed by or collected for the district under s. 77.706 from April 1, 2015, to September 30, 2015, including the amounts returned under par. (c), no later than December 31, 2015. The department shall distribute, as provided under par. (a), any additional amounts collected for the district under s. 77.706 after September 30, 2015, including interest, penalties, and amounts due as a result of an audit determination, annually beginning on October 1, 2016, and on October 1 of each year thereafter.

(e) Subsection (3p), as it relates to calculating the distribution from the appropriation under s. 20.835 (4) (ge), applies to calculating the distribution from that appropriation under this subsection. Interest paid on refunds of local professional football stadium district sales and use taxes issued by the department on or after April 1, 2015, shall reduce the amounts distributed under this subsection.

**History:** 1985 a. 29, 41; 1991 a. 37, 269; 1995 a. 56; 1999 a. 9, 167; 2001 a. 16; 2009 a. 28; 2011 a. 32, 68; 2015 a. 114.

**77.77 Transitional provisions. (1)** (a) The sales price from services subject to the tax under s. 77.52 (2) or the lease, rental, or license of tangible personal property and property, items, and goods specified under s. 77.52 (1) (b), (c), and (d), is subject to the taxes under this subchapter, and the incremental amount of tax caused by a rate increase applicable to those services, leases, rentals, or licenses is due, beginning with the first billing period starting on or after the effective date of the county ordinance, special district resolution, or rate increase, regardless of whether the service is furnished or the property, item, or good is leased, rented, or licensed to the customer before or after that date.

(b) The sales price from services subject to the tax under s. 77.52 (2) or the lease, rental, or license of tangible personal property and property, items, and goods specified under s. 77.52 (1) (b), (c), and (d) is not subject to the taxes under this subchapter, and a decrease in the tax rate imposed under this subchapter on those services first applies, beginning with bills rendered on or after the effective date of the repeal or sunset of a county ordinance or special district resolution imposing the tax or other rate decrease, regardless of whether the service is furnished or the property, item, or good is leased, rented, or licensed to the customer before or after that date.

**(3)** The sale of building materials to contractors engaged in the business of constructing, altering, repairing or improving real estate for others is not subject to the taxes under this subchapter, and the incremental amount of tax caused by the rate increase applicable to those materials is not due, if the materials are affixed and made a structural part of real estate, and the amount payable to the contractor is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to the effective date of the county ordinance, special district resolution, or rate increase or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before that date.

**History:** 1985 a. 41; 1995 a. 56; 2009 a. 2, 28; 2011 a. 32.

**77.78 Registration.** No motor vehicle, boat, snowmobile, recreational vehicle, as defined in s. 340.01 (48r), trailer, semitrailer, all−terrain vehicle, utility terrain vehicle, or aircraft that is required to be registered by this state may be registered or titled by this state unless the registrant files a sales and use tax report and pays the county tax and special district tax at the time of registering or titling to the state agency that registers or titles the property. That state agency shall transmit those tax revenues to the department of revenue.

**History:** 1985 a. 41; 1995 a. 56; 2007 a. 11; 2009 a. 28; 2011 a. 32, 208.

**77.785 Duties of retailers. (1)** All retailers shall collect and report the taxes under this subchapter on the sales price from leases and rentals of property or items, property, and goods under s. 77.52 (1) (b), (c), and (d) under s. 77.71 (4).

**(2)** Prior to registration or titling, a retailer of a boat, aircraft, motor vehicle, manufactured home, as defined in s. 101.91 (2), or recreational vehicle, as defined in s. 340.01 (48r), shall collect the taxes under this subchapter on sales of items under s. 77.71 (4). The retailer shall remit those taxes to the department of revenue along with payments of the taxes under subch. III.

**History:** 1985 a. 41; 1987 a. 141; 2007 a. 11; 2009 a. 2.

**77.79 Relation to subch. III.** The provisions of subch. III; including those related to exemptions, exceptions, exclusions and the retailers' discount; that are consistent with this subchapter, as they apply to the taxes under that subchapter, apply to the taxes under this subchapter.

**History:** 1985 a. 41; 1999 a. 32.

## SUBCHAPTER VI

## MANAGED FOREST LAND

**Cross−reference:** See also ch. NR 46, Wis. adm. code.

**77.80 Purpose.** The purpose of this subchapter is to encourage the management of private forest lands for the production of future forest crops for commercial use through sound forestry practices, recognizing the objectives of individual property owners, compatible recreational uses, watershed protection, development of wildlife habitat and accessibility of private property to the public for recreational purposes.

**History:** 1985 a. 29.

**77.81 Definitions.** In this subchapter:

**(1)** "Department" means the department of natural resources.

**(1m)** "Fixed sampling equipment" means physical equipment that will be in the same location for more than 24 hours and that is used for the evaluation of a proposed ferrous mining site, including equipment that is used for boring, drilling, bulk sampling, or obtaining climatological data or other data relating to the environment or the state's natural resources.

**(2)** "Forestry" means managing forest lands and their related resources, including trees and other plants, animals, soil, water and air.

**(2m)** "Independent certified plan writer" means a plan writer certified by the department but who is not acting under contract with the department under s. 77.82 (3) (g).

**(2r)** "Large property" means one or more separate parcels of land that are under the same ownership, that collectively are greater than 1,000 acres in size, and that are managed forest land or forest croplands or a combination thereof.

**(3)** "Merchantable timber" means standing trees which, because of their size and quality, are salable.

**(4)** "Municipality" means a town, village, or city.

**(4m)** "Natural disaster" means fire, ice, snow, wind, flooding, insects, drought, or disease.

**(5)** "Nonprofit organization" means a nonprofit corporation, a charitable trust, or other nonprofit association that is described in section 501 (c) (3) of the Internal Revenue Code and is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

**(5m)** "Proposed ferrous mining site" means a proposed mining site, as described under s. 295.46 (1), for which the person proposing to engage in ferrous mining has provided preapplication notification under s. 295.465.

**(6)** "Recreational activities" means recreational outdoor activities that are compatible with the practice of forestry, as determined by the department. "Recreational activities" includes hunting, fishing, hiking, sight−seeing, cross−country skiing, horseback riding, and staying in cabins.

**History:** 1985 a. 29; 2003 a. 228; 2005 a. 25; 2007 a. 20; 2013 a. 81; 2015 a. 358.

**77.82 Managed forest land; application. (1)** ELIGIBILITY REQUIREMENTS. (a) A parcel of land is eligible for designation as managed forest land only if it fulfills the following requirements:

1. It consists of at least 20 contiguous acres, except as provided in this subdivision. The fact that a lake, river, stream or flowage, a public or private road or a railroad or utility right−of−way separates any part of the land from any other part does not render a parcel of land noncontiguous. If a part of a parcel of at least 20 contiguous acres is separated from another part of that parcel by a public road, that part of the parcel may be enrolled in the program, even if that part is less than 20 acres, if that part meets the requirement under subd. 2. and is not ineligible under par. (b). The owner of a parcel of less than 20 acres that is subject to a managed forest land order before April 16, 2016, may apply one time for a renewal of the order under sub. (12) without meeting the 20−acre requirement.

2. At least 80 percent of the parcel must be producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year.

(b) The following land is not eligible for designation as managed forest land:

1. A parcel of which more than 20 percent consists of land that is unsuitable for producing merchantable timber, including water, marsh, muskeg, bog, rock outcrops, sand dunes, farmland, roadway or railroad and utility rights−of−way.

2. A parcel that is developed for commercial recreation, for industry or for any other use determined by the department to be incompatible with the practice of forestry.

3. A parcel on which a building or an improvement associated with a building is located.

4. A parcel that is not accessible to the public on foot by public road or from other land open to public access. This subdivision does not apply to a parcel or part of a parcel that is closed to public access under s. 77.83 (1).

(bp) 1. For purposes of par. (b) 3., and except as provided in subd. 2., an improvement is any of the following:

a. Any accessory building, structure, or fixture that is built or placed on the parcel for its benefit.

b. Landscaping that is done on the parcel.

2. An improvement does not include any of the following:

a. A public or private road.

b. A railroad or utility right−of−way.

c. A fence, unless the fence prevents the free and open movement of wild animals across any portion of the parcel.

d. Culverts.

e. Bridges.

f. Hunting blinds, as specified by rules promulgated by the department.

g. Structures and fixtures that are needed for sound forestry practices.

(c) In addition to the requirements under pars. (a) and (b), for land subject to an application under sub. (4m), all forest croplands owned by the applicant on the date on which the application is filed that are located in the municipality or municipalities for which the application is filed shall be included in the application.

**(2)** APPLICATION. Any owner of land may file an application with the department to designate any eligible parcel of land as managed forest land. An application may include any number of eligible parcels under the same ownership. Each application shall include all of the following:

(a) The name and address of each owner.

(b) The legal description or the location and acreage of each parcel of land.

(c) The legal description of the area in which the parcel is located.

(cm) A copy of an instrument that has been recorded in the office of the register of deeds of each county in which the property is located that shows the ownership of the land subject to the application.

(d) A description of the physical characteristics of the land, in sufficient detail to enable the department to determine if it meets the eligibility requirements under sub. (1).

(dm) Subject to sub. (12), a proposed management plan.

(e) A statement of the owner's forest management objectives for the production of merchantable timber, in sufficient detail to provide direction for the approval of the proposed management plan. The application may also state additional forest management objectives, which may include wildlife habitat management, aesthetic considerations, watershed management and recreational use.

(f) Proof that each person holding any encumbrance on the land agrees that the application may be filed.

(g) A map, diagram or aerial photograph showing the location and acreage of any area that will be designated as closed to the public under s. 77.83.

(h) Whether the land will be designated as managed forest land for 25 or 50 years.

**(2m)** FEES FOR APPLICATIONS AND MANAGEMENT PLANS. (a) An application under sub. (2), (4m), or (12) shall be accompanied by a nonrefundable application recording fee of $20 unless a different amount for the fee is established by the department by rule at an amount equal to the average expense to the department for recording an order issued under this subchapter.

(ac) If the department prepares a management plan under sub. (3) (am), the department shall collect from the applicant the management plan fee established under par. (am).

(ag) If a proposed management plan accompanying an application filed under sub. (2), (4m), or (12) is not approved by the department under its initial review under sub. (3) (ar), and if the department agrees to complete the proposed management plan under sub. (3) (ar), the department shall collect from the applicant the management plan fee established under par. (am).

(am) The department shall by rule establish on an annual basis a nonrefundable fee that the department shall charge for a management plan prepared or completed by the department. The fee shall be based on the comparable commercial market rate that is charged for preparation of such management plans.

(c) A proposed management plan is exempt from the management plan fee under par. (ag) if it is prepared or completed by an independent certified plan writer instead of by the department.

(d) All of the application recording fees collected under par. (a) shall be credited to the appropriation under s. 20.370 (1) (cr).

(dm) 1. Of each management plan fee, $300 or the entire fee, whichever is less, that is collected under par. (ag) shall be credited to the appropriation under s. 20.370 (1) (cx).

2. Any amount not credited to the appropriation under s. 20.370 (1) (cx), as calculated in subd. 1., shall be deposited into the conservation fund for forestry purposes.

**(3)** MANAGEMENT PLAN. (ag) A proposed management plan shall cover the entire acreage of each parcel subject to the application and shall be prepared by an independent certified plan writer or by the department if par. (am) applies.

(am) If the department determines that an applicant is not able to have a proposed management plan prepared by a certified independent plan writer, the department shall prepare the plan. The department shall promulgate rules establishing the criteria that shall be met in order to determine that an applicant is unable to prepare such a plan.

(ar) For a proposed management plan prepared by an independent certified plan writer, the department, after considering the owner's forest management objectives as stated under sub. (2) (e), shall review and either approve or disapprove the proposed management plan. If the department disapproves the proposed plan, it shall inform the applicant of the changes necessary to qualify the plan for approval upon subsequent review. At the request of the applicant, the department may agree to complete the proposed management plan.

(c) To qualify for approval, a management plan shall include all of the following:

1. The name and address of each owner of the land.

2. The legal description of the parcel or of the area in which the parcel is located.

3. A statement of the owner's forest management objectives.

4. A map, diagram or aerial photograph which identifies both forested and unforested areas of the land, using conventional map symbols indicating the species, size and density of vegetation and the other major features of the land.

5. A map, diagram or aerial photograph which identifies the areas designated as open and closed under s. 77.83.

6. A description of the forestry practices, including harvesting, thinning and reforestation, that will be undertaken during the term of the order, specifying the period of time in which each will be completed.

7. A description of soil conservation practices that may be necessary to control any soil erosion that may result from the forestry practices specified under subd. 6.

(d) The management plan may also specify activities that will be undertaken for the management of forest resources other than trees, including wildlife habitat, watersheds and aesthetic features.

(e) A management plan shall contain a statement that the owner agrees to comply with all of its terms and with the conditions of this subchapter and shall be signed by the owner and a representative of the department.

(f) An owner and the department may mutually agree to amend a management plan.

(g) The department shall certify plan writers and shall promulgate rules specifying the qualifications that a person must satisfy to become a certified plan writer. For management plans prepared or completed by the department under this subsection, the department may contract with plan writers certified by the department to prepare and complete these plans.

**(4)** ADDITIONS TO MANAGED FOREST LAND. An owner of land that is designated as managed forest land may file an application with the department to designate as managed forest land an additional parcel of land if the additional parcel is at least 3 acres in size and is contiguous to any of that designated land. The application shall be accompanied by a nonrefundable $20 application recording fee unless a different amount for the fee is established by the department by rule at an amount equal to the average expense to the department of recording an order issued under this subchapter. The fee shall be deposited in the conservation fund and credited to the appropriation under s. 20.370 (1) (cr). The application shall be filed on a department form and shall contain any additional information required by the department. The tax rate applicable to an addition under this subsection shall be the tax rate currently applicable to the parcel to which the land is being added.

**(4m)** CONVERSION OF FOREST CROPLANDS TO MANAGED FOREST LAND. (a) An owner of land that is entered as forest croplands under s. 77.02 may file an application with the department under sub. (2) to convert all or a portion of the land to managed forest land, subject to sub. (1) (c).

(b) An application under this subsection shall specify whether the order designating the land as managed forest land will remain in effect for 25 years or 50 years, as elected by the owner.

(d) An owner of land who has filed a conversion application under this subsection and for whom the department is preparing or completing a management plan may withdraw the request and have it prepared by an independent certified plan writer if the owner determines that the department is not preparing or completing the management plan in a timely manner.

**(5)** NOTICE OF APPLICATION; REQUEST FOR DENIAL. (a) Upon receipt of an application under sub. (2), (4) or (4m), the department shall provide written notice of the application to each clerk of each municipality in which the land is located.

(b) The governing body of any municipality in which the proposed managed forest land is located or a resident or property tax payer of such a municipality may, within 15 days after the notice under par. (a) is provided, request the department to deny the application on the grounds that the land fails to meet the eligibility requirements under sub. (1) or that, if the addition is approved, the entire parcel will fail to meet those eligibility requirements. The request shall be in writing and shall specify the reason for believing that the land is or would be ineligible.

**(6)** INVESTIGATION; HEARING. (a) The department shall conduct any investigation necessary to reach a decision on an application.

(b) 1. If the department determines, after receipt of a request under sub. (5) (b) or as a result of its investigation, that further information is needed, it may schedule a public hearing to take testimony relating to the eligibility of the land.

2. At least 10 days before the date of the hearing, the department shall mail written notice of the date, time, and place of the hearing to the applicant, to each person who submitted a request under sub. (5) (b), and to the clerk of each municipality in which the land is located.

3. A public hearing held under this paragraph may be adjourned. No notice of the adjourned hearing is required other than an announcement of the date, time and place given at the initial hearing by the person presiding at the hearing.

**(7)** DECISION. (a) After considering the testimony presented at the public hearing, if any, the facts discovered by its investiga-

tion and the land use in the area in which the land is located, the department shall approve an application under sub. (2) or (4m) if it determines all of the following:

1. That the land meets the eligibility requirements under sub. (1).

2. That all facts stated in the application are correct.

3. That a stand of merchantable timber will be developed on at least 80 percent of the land within a reasonable period of time.

4. That the use of the land as managed forest land is not incompatible with the existing uses of the land in each municipality in which it is located.

5. That there are no delinquent taxes on the land.

(b) After considering the testimony presented at the public hearing, if any, and the facts discovered by its investigation, the department shall approve an application under sub. (4) if it determines all of the following:

1. That all facts stated in the application are correct.

2. That the total parcel with the addition will meet the eligibility requirements under sub. (1).

3. That there are no delinquent taxes on either the land originally designated or on the proposed additional parcel.

4. That the owner agrees to any amendments to the management plan determined by the department to be necessary as a result of the addition.

(c) Except as provided in par. (d), if an application is received on or before June 1 of any year, the department shall investigate and shall either approve the application and issue the order under sub. (8) or deny the application before the following November 21. An application received after June 1 shall be acted on by the department as provided in this subdivision before the November 21 of the year following the year in which the application is received.

(d) The department shall approve or disapprove an application under par. (a) that is filed under sub. (4m) within 3 years after the date on which the application is filed with the department.

**(8)** ORDER. If an application under sub. (2), (4m), or (12) is approved, the department shall issue an order designating the land as managed forest land for the time period specified in the application. If an application under sub. (4) is approved, the department shall amend the original order to include the additional parcel. The department shall provide the applicant with a copy of the order or amended order and shall also file a copy with the department of revenue, the supervisor of assessments, and the clerk of each municipality in which the land is located, and shall record the order with the register of deeds in each county in which the land is located.

**(9)** EFFECTIVE DATE OF ORDER. An order or amended order under sub. (8) issued before November 21 of any year takes effect on the January 1 after the date of issuance. An order or amended order under sub. (8) issued on or after November 21 of any year takes effect on the 2nd January 1 after the date of issuance.

**(10)** DENIAL. If the department denies an application, it shall notify the applicant in writing, stating the reason for the denial.

**(11)** DURATION; EFFECT OF CHANGES. An order issued under this subchapter shall constitute a contract between the state and the owner and shall remain in effect for the period specified in the application unless the land is withdrawn under s. 77.84 (3) (b) or 77.88. Except as provided in subs. (3) (f) and (11m), the department may not amend or otherwise change the terms of an order or management plan to conform with changes made to any provision of this subchapter subsequent to the date on which the order was entered or the plan was approved. If a statute is enacted or a rule is promulgated during the period of the order that materially changes the terms of the order, the landowner shall elect between acceptance of modifications to the contract consistent with the provisions of the statute or rule or voluntary withdrawal of the land without penalty.

**(11g)** WITHDRAWAL TAX ON CONVERTED FOREST CROPLANDS PROHIBITED. No tax or interest may be assessed under s. 77.10 (2) (a) on land converted to managed forest land pursuant to an application approved under sub. (7) (d).

**(11m)** ORDERS FOR THE LAND IN THE LOWER WISCONSIN STATE RIVERWAY. An owner of timber that is exempt under s. 30.44 (3) (c) 2. shall comply with a rule regulating timber cutting and harvesting promulgated under s. 30.42 (1) (d):

(a) If the rule is not inconsistent with the order issued under sub. (8); or

(b) If the owner agrees to amend the order issued under sub. (8) to require compliance with the rules.

**(12)** RENEWAL. (a) An owner of managed forest land may file an application with the department under sub. (2) for renewal of the order. An application for renewal shall be filed no later than the June 1 before the expiration date of the order. The application shall specify whether the owner wants the order renewed for 25 or 50 years. The provisions under subs. (3), (5), (6), and (7) do not apply to an application under this paragraph. The department may deny the application only if any of the following applies:

1. The land fails to meet the eligibility requirements under sub. (1).

2. The land that is subject to the application for renewal of the order is not identical to the land that is designated as managed forest land under the existing order.

3. The owner has failed to comply with the management plan that is in effect on the date that the application for renewal is filed.

4. The management plan does not contain any mandatory forestry or soil conservation practices, as described in sub. (3) (c) 6. and 7., or any mandatory management activities, as described in sub. (3) (d), that the department determines are required to be continued during the term of the renewed order.

5. No review of the mandatory forestry or soil conservation practices or the mandatory management activities contained in the management plan has been conducted within the 5 years immediately preceding the date of the application for renewal.

6. Within the 5 years immediately preceding the date of the application for renewal, the management plan has not been updated to reflect the completion of any forestry or soil conservation practices or management activities contained in the plan.

7. There are delinquent taxes on the land.

(b) If the application is denied, the department shall state the reason for the denial in writing.

**History:** 1985 a. 29; 1989 a. 31; 1993 a. 16, 131, 301, 491; 1995 a. 27; 1997 a. 27, 35, 237; 2001 a. 109; 2003 a. 228; 2005 a. 25, 64, 299; 2007 a. 97; 2009 a. 365; 2011 a. 260 s. 80; 2015 a. 358.

**77.83 Closed, open and restricted areas. (1)** CLOSED AREAS. (a) An owner may designate land subject to a managed forest land order as closed to public access.

(am) Notwithstanding par. (a), not more than 320 acres owned by any property owner may be designated as closed managed forest land in each municipality.

(b) If any area of an owner's managed forest land is already designated as closed, an addition to the land approved under s. 77.82 (7) (b) may be designated as closed only under the following conditions:

1. The addition does not result in increasing the closed portion of the land to an area greater than that permitted under par. (am).

2. The additional area is contiguous to the area that is already designated as closed.

(c) If all or any part of an owner's closed managed forest land is withdrawn or transferred as provided under s. 77.88, the owner may designate a different or an additional closed area if it meets the requirements of par. (b).

(d) An owner of land designated as closed under par. (a) may permit a person who performs land management activities on the land to access the land to conduct recreational activities.

**(1m)** MODIFICATION OF DESIGNATION. For a managed forest land order that takes effect on or after April 28, 2004, the owner of the managed forest land may modify the designation of a closed or open area 2 times during the term of the order. For a managed forest land order that takes effect before April 28, 2004, the owner of the managed forest land may modify the designation of a closed or open area 2 times during the period beginning with April 28, 2004, and ending with the expiration date of the order, regardless of whether the owner has previously modified the designation as authorized by rules promulgated by the department.

**(2)** OPEN AREAS; RESTRICTIONS. (a) Except as provided in pars. (b) and (c) and subs. (1) and (2m), each owner of managed forest land shall permit public access to the land for the purposes of hunting, fishing, hiking, sight−seeing, and cross−country skiing.

(ar) An owner of managed forest land that is designated as closed may enter into a lease or other agreement for consideration that permits persons to engage in a recreational activity on the land.

(b) An owner may restrict public access to any area of open managed forest land which is within 300 feet of any building or within 300 feet of a commercial logging operation that conforms to the management plan.

(c) An owner may prohibit the use of motor vehicles, as defined under s. 340.01 (35), or snowmobiles, as defined under s. 340.01 (58a), or both on any open managed forest land. At the request of an owner, the department may provide assistance in enforcing the prohibition.

**(2m)** PROPOSED FERROUS MINING SITES. (a) The requirement under sub. (2) (a) that public access be permitted on managed forest land designated as open does not apply to an area of land within a proposed ferrous mining site that is located within 600 feet of fixed sampling equipment or within 600 feet of either side of a road that is used for purposes associated with ferrous mining.

(b) In addition to any managed forest land for which access is restricted under par. (a), the department may restrict public access to open managed forest land within a proposed ferrous mining site for any of the purposes specified in sub. (2) (a) if the department determines that it is necessary to ensure the safety of the public, the employees and agents of the person proposing to engage in ferrous mining, or the employees and agents of regulatory bodies.

(c) No restriction under par. (a) or (b) applies after whichever of the following 3 dates occurs first:

1. The date on which the department approves or denies the application for a ferrous mining permit for the proposed ferrous mining site.

2. The date on which the department determines that the person who proposed to engage in ferrous mining has ceased to pursue a mining permit for the proposed ferrous mining site.

3. a. The 730th day after the date on which the person proposing to engage in ferrous mining provides to the department a preapplication notification under s. 295.465, except as provided in subd. 3. b.

b. December 14, 2015, if the person proposing to engage in ferrous mining has provided to the department the preapplication notification before December 14, 2013.

(d) The department may extend the date under par. (c) 3. for a period of up to 2 additional years if the department determines, after consulting with the person proposing to engage in ferrous mining and other regulatory bodies, that it is likely that the person, the department, or another regulatory body will need additional time to conduct evaluation activities at the proposed ferrous mining site during that period.

(e) Notwithstanding pars. (a) and (b), public access shall always be permitted on open managed forest land within a proposed ferrous mining site for any of the following:

1. Fishing that occurs within 50 feet of the water's edge of a class I or class II trout stream.

2. Deer hunting during the regular fall open season for hunting deer with firearms that begins on the Saturday immediately preceding the 4th Thursday in November.

(g) The department shall post information regarding public access to managed forest land located in a proposed ferrous mining site on the department's Internet site. The information shall include all of the following:

1. The areas where public access is permitted, and which activities, as specified in sub. (2) (a), are allowed in each area.

2. The dates and times that each activity allowed under subd. 1. is permitted in a given area.

**(3)** SIGNS. An owner may post signs specifying the designation of or restrictions applicable to any area of managed forest land. The department may, by rule, specify design standards for these signs.

**(4)** PENALTY. Any person who fails to comply with sub. (2) (a) or any rule promulgated under sub. (3) shall forfeit not more than $500.

**History:** 1985 a. 29; 1989 a. 79; 1993 a. 131; 2003 a. 228; 2005 a. 299; 2007 a. 20; 2013 a. 81; 2015 a. 358.

**77.84 Taxation of managed forest land. (1)** TAX ROLL. Each clerk of a municipality in which the land is located shall enter in a special column or other appropriate place on the tax roll the description of each parcel of land designated as managed forest land, and shall specify, by the designation "MFL−O" or "MFL−C", the acreage of each parcel that is designated open or closed under s. 77.83. The land shall be assessed and is subject to review under ch. 70. Except as provided in this subchapter, no tax may be levied on managed forest land, except that any building on managed forest land is subject to taxation as personal property under ch. 70.

**(2)** ACREAGE SHARE; PAYMENT FOR CLOSED LAND. (a) For managed forest land orders that take effect before April 28, 2004, each owner of managed forest land shall pay to each municipal treasurer an acreage share of 74 cents per acre on or before January 31.

(am) For managed forest land orders that take effect on or after April 28, 2004, each owner of managed forest land shall pay to each municipal treasurer, on or before January 31, an amount that is equal to 5 percent of the average statewide property tax per acre of property classified under s. 70.32 (2) (a) 6., as determined under par. (cm), for each acre of managed forest land.

(b) For managed forest land orders that take effect before April 28, 2004, in addition to the payment under par. (a), each owner shall pay $1 for each acre that is designated as closed under s. 77.83 and for each acre that is located in a proposed ferrous mining site and that is not open to all of the outdoor activities specified in s. 77.83 (2) (a) for any part of the previous calendar year. The payment shall be made to each municipal treasurer on or before January 31.

(bm) For managed forest land orders that take effect on or after April 28, 2004, in addition to the payment under par. (am), each owner of managed forest land shall pay to each municipal treasurer, on or before January 31, an amount that is equal to 20 percent of the average statewide property tax per acre of property classified under s. 70.32 (2) (a) 6., as determined under par. (cm), for each acre that is designated as closed under s. 77.83 and for each acre that is located in a proposed ferrous mining site and that is not open to all of the outdoor activities specified in s. 77.83 (2) (a) for any part of the previous calendar year.

(bp) For managed forest land orders that take effect before April 28, 2004, in addition to the payments under pars. (a) and (b), each owner of managed forest land shall pay to each municipal treasurer, on or before January 31, an amount that is equal to 15 percent of the average statewide property tax per acre of property classified under s. 70.32 (2) (a) 6., as determined under par. (cm), for each acre that is located in a proposed ferrous mining site, and

that is not open to all of the outdoor activities specified in s. 77.83 (2) (a) for any part of the previous calendar year.

(c) In 1992 and each 5th year thereafter, the department of revenue shall adjust the amounts under pars. (a) and (b) by multiplying the amount specified by a ratio using as the denominator the department of revenue's estimate of the average statewide tax per acre of property classes under s. 70.32 (2) (b) 4., 1993 stats., s. 70.32 (2) (b) 5., 1993 stats., and s. 70.32 (2) (b) 6., 1993 stats., for 1986 and, as the numerator, the department of revenue's estimate of the average tax per acre for the same classes of property for the year in which the adjustment is made.

(cm) For purposes of determining the per acre amounts under pars. (am) and (bm), in 2004 and in 2007 and each 5th year thereafter, the department of revenue shall determine the average statewide tax per acre of property classified under s. 70.32 (2) (a) 6. by multiplying the average equalized value of property classified under s. 70.32 (2) (a) 6., as determined under s. 70.57, by the average tax rate determined under s. 76.126.

**(3)** DELINQUENCY. (a) The procedures specified for the collection of delinquent taxes under ch. 74, and for the sale of land for delinquent taxes under ch. 75 apply to taxes returned delinquent under this subsection. Immediately upon the expiration of 2 years after the date the county acquires a tax certificate, the county clerk shall take a tax deed as provided under ch. 75. The county clerk shall certify to the department that a tax deed has been taken and shall include the legal description of the land subject to the tax deed.

(b) Immediately after receiving the certification of the county clerk that a tax deed has been taken, the department shall issue an order withdrawing the land as managed forest land. The notice requirement under s. 77.88 (1) does not apply to the department's action under this paragraph. The department shall notify the county treasurer of the amount of the withdrawal fee under s. 77.88 (5m) and the withdrawal tax, as determined under s. 77.88 (5). The amount of the tax and the fee shall be payable to the department under s. 75.36 (3) if the property is sold by the county. The amount shall be credited to the conservation fund.

**History:** 1985 a. 29; 1987 a. 378; 1995 a. 27; 1997 a. 35; 2003 a. 228; 2005 a. 299; 2013 a. 81.

**77.85 State contribution.** The department shall pay before June 30 annually the municipal treasurer, from the appropriation under s. 20.370 (5) (bv), 20 cents for each acre of land in the municipality that is designated as managed forest land under this subchapter and for each acre of land in the municipality that has been withdrawn under s. 77.885 but for which payments under s. 77.84 (2) are being made.

**History:** 1985 a. 29; 1991 a. 39; 1995 a. 27; 2009 a. 28.

**77.86 Forestry practices. (1)** CUTTING REGULATED. (a) Except as provided under sub. (6), no person may cut merchantable timber on managed forest land on which the payment under s. 77.84 (2) is delinquent.

(b) 1. Except as provided under sub. (6), an owner who intends to cut merchantable timber on managed forest land shall, at least 30 days before the cutting is to take place, on a form provided by the department, file a notice of intent to cut and, except as provided under subd. 2., request approval of the proposed cutting from the department.

2. An owner who is required under the terms of an approved management plan to cut merchantable timber on managed forest land is not required to obtain approval of the cutting of that timber before the cutting takes place if any of the following provided the required notice of intent to cut to the department under subd. 1.:

a. A cooperating forester authorized under s. 28.05 to assist the state in the harvesting and sale of timber.

b. A forester accredited by the Society of American Foresters, Association of Consulting Foresters, or Wisconsin Consulting Foresters.

c. A person who holds at least a bachelor's degree from a forestry program provided by a nationally or regionally accredited institution of higher education and who has 5 years of experience engaged in the full−time profession of managing forests, including timber harvesting, wildlife management, water quality, and recreation to maintain a healthy and productive forest.

d. A person who holds a degree or diploma from a 2−year forestry program provided by an accredited technical or vocational school and who has 5 years of experience engaged in the full−time profession of managing forests, including timber harvesting, wildlife management, water quality, and recreation to maintain a healthy and productive forest.

e. A person who has 5 years of experience engaged in the full−time profession of managing forests, including timber harvesting, wildlife management, water quality, and recreation to maintain a healthy and productive forest.

(c) If the proposed cutting conforms to the management plan and is consistent with sound forestry practices, the department shall approve the request.

(d) If the proposed cutting does not conform to the management plan or is not consistent with sound forestry practices, the department shall assist the owner in developing an acceptable proposal before approving the request.

(e) The department shall not restrict an approved cutting based on standards established under s. 23.27 (3).

(f) The department shall send notice to the person who filed the notice of intention to cut by certified letter or electronic mail no later than the end of the next business day of the department's decision to deny a cutting notice and the reason for the denial.

**(3)** TIME LIMIT. All cutting specified in the notice under sub. (1) (b) shall be commenced within one year after the date the proposed cutting is approved or, if approval is not required under sub. (1) (b) 2., within one year after the date on which the notice under sub. (1) (b) 1. is filed. The owner shall report to the department the date on which the cutting is commenced.

**(4)** REPORTING. Within 30 days after completion of any cutting under this section, the owner shall report to the department, on a form provided by the department, a description of the species of wood, kind of product and the quantity of each species cut as shown by the scale or measurement made on the ground as cut, skidded, loaded or delivered, or by tree scale certified by a forester acceptable to the department if the wood is sold by tree measurement.

**(5)** PENALTIES. (a) Any person who fails to file the notice required under sub. (1) (b), who fails to file a report as required under sub. (4), or who files a false report under sub. (4) shall forfeit not more than $1,000.

(b) Any owner who cuts merchantable timber in violation of this section is subject to a forfeiture equal to 20 percent of the current value of the merchantable timber cut, based on the stumpage value established under s. 77.91 (1).

**(6)** EXCEPTION. This section does not apply to an owner who cuts wood on managed forest land for use as fuel in the owner's dwelling.

**History:** 1985 a. 29; 2009 a. 365; 2015 a. 55, 358.

**77.875 Grazing restricted.** An owner of managed forest land may not permit domesticated animals to graze on managed forest land.

**History:** 1985 a. 29.

**77.876 Noncompliance assessment. (1)** ASSESSMENT. The department shall certify to each municipality in which the property is located an owner's failure to complete a forestry practice during the period of time required under an applicable management plan, and the municipality shall impose a noncompliance assessment of $250 against the owner for each failure. The depart-

ment shall mail a copy of the certificate of assessment to the owner at the owner's last−known address and to the municipality.

**(2)** PAYMENT. An assessment under sub. (1) is due and payable to the municipality on the last day of the month following the date the certificate is mailed to the owner. The municipality shall collect interest at the rate of 12 percent per year on any assessment that is paid later than the due date.

**(3)** OWNER'S LIABILITY. The owner is personally liable for an assessment under sub. (1). An unpaid assessment becomes a lien against the merchantable timber cut. If the merchantable timber cut is mingled with other wood products, the unpaid assessment becomes a lien against all of the wood products while they are in the owner's possession or in the possession of any person other than a purchaser for value without notice in the usual course of business.

**(4)** DELINQUENCY. If an assessment due under sub. (1) is not paid on or before the last day of the August following the date specified under sub. (2), the municipality shall certify to the taxation district clerk the description of the land and the amount due for the assessment and interest. The taxation district clerk shall enter the delinquent amount on the property tax roll as a special charge.

**History:** 2003 a. 228; 2005 a. 299.

## 77.88 Withdrawal; transfer of ownership; nonrenewal.

**(1)** WITHDRAWAL BY DEPARTMENT ORDER. (a) The department may, at the request of the owner of managed forest land or of the governing body of any municipality in which any managed forest land is located, or at its own discretion, investigate to determine whether the designation as managed forest land should be withdrawn. Except as provided in par. (am), the department shall notify the owner of the land and the mayor of the city, the chairperson of the town, or the president of the village in which the land is located of the investigation.

(am) If a city or village is organized under subch. I of ch. 64, the department shall notify the president of the city council or village board of any investigation under par. (a).

(b) Following an investigation under par. (a), the department may order the withdrawal of all or any part of a parcel of managed forest land for any of the following reasons:

1. Failure of the land to conform to an eligibility requirement under s. 77.82 (1).

2. The owner's failure to comply with this subchapter or the management plan.

3. Cutting by the owner in violation of s. 77.86.

4. The owner's development or use of any part of the parcel for a purpose which is incompatible with the purposes specified in s. 77.80.

5. The owner's posting of signs or otherwise denying access to open managed forest land.

(c) If the department determines that land should be withdrawn, it shall issue an order withdrawing the land as managed forest land and shall assess against the owner the tax under sub. (5) and the withdrawal fee under sub. (5m).

**(2)** SALE OR TRANSFER OF OWNERSHIP. (a) *Authority to transfer.* An owner may sell or otherwise transfer ownership of all or part of a parcel of the owner's managed forest land.

(ac) *Transferred land; requirements met.* 1. If the land transferred under par. (a) meets the eligibility requirements under s. 77.82 (1) (a) and (b), the land shall continue to be designated as managed forest land if the transferee, within 30 days after a transfer of ownership, files a form provided by the department signed by the transferee. By signing the form, the transferee certifies to the department an intent to comply with the existing management plan for the land and any amendments to the plan. The transferee shall provide proof that each person holding any encumbrance on the land agrees to the designation. The transferee may designate an area of the transferred land closed to public access as provided under s. 77.83. The department shall issue an order continuing the designation of the land as managed forest land under the new ownership. The transferee shall pay a $100 fee that will accompany the report. The fee shall be deposited in the conservation fund. Twenty dollars of the fee or a different amount of the fee as may be established under subd. 2. shall be credited to the appropriation under s. 20.370 (1) (cr). The department shall immediately notify each person entitled to notice under s. 77.82 (8).

2. The department may establish by rule a different amount of each fee under subd. 1. that will be credited to the appropriation under s. 20.370 (1) (cr). The amount shall be equal to the average expense to the department of recording an order issued under this subchapter.

3. If the transferee does not provide the department with the certification required under subd. 1., the department shall issue an order withdrawing the land and shall assess against the transferee the withdrawal tax under sub. (5) and the withdrawal fee under sub. (5m). Notwithstanding s. 77.90, the transferee is not entitled to a hearing on an order withdrawing land under this subdivision.

(am) *Transferred land; requirements not met.* If the land transferred under par. (a) does not meet the eligibility requirements under s. 77.82 (1) (a) and (b), the department shall issue an order withdrawing the land from managed forest land designation and shall assess against the owner a withdrawal tax under sub. (5) and the withdrawal fee under sub. (5m).

(b) *Remaining land; requirements met.* If the land remaining after a transfer under par. (a) meets the eligibility requirements under s. 77.82 (1) (a) and (b), the remaining land shall continue to be designated as managed forest land.

(c) *Remaining land; requirements not met.* If the land remaining after a transfer under par. (a) does not meet the eligibility requirements under s. 77.82 (1) (a) and (b), the department shall issue an order withdrawing the land and shall assess against the owner the withdrawal tax under sub. (5) and the withdrawal fee under sub. (5m). Notwithstanding s. 77.90, the owner is not entitled to a hearing on an order withdrawing land under this paragraph.

**(2m)** DAMAGE TO LAND. (a) If a parcel of managed forest land has been damaged by a natural disaster, the owner of the parcel may notify the department, and the department shall establish a period of time that the owner of the parcel will have to restore the productivity of the land so that it meets the requirements under s. 77.82 (1) (a) 2.

(b) If the owner fails to complete the restoration in the applicable period of time, the owner may request that the department withdraw all or part of the land in accordance with sub. (3), (3k), or (3L), or the department may proceed with a withdrawal by department order under sub. (1).

(c) The department may promulgate a rule that establishes criteria to be used by the department for determining the length of time that an owner shall have to complete the restoration.

**(3)** VOLUNTARY WITHDRAWAL; TOTAL OR PARTIAL. (am) *Entire parcels.* Upon request of an owner of managed forest land to withdraw an entire parcel of managed forest land, the department shall issue an order withdrawing the land.

(b) *Parts of parcels.* Upon request of an owner of managed forest land to withdraw part of a parcel of managed forest land, the department shall issue an order withdrawing the land subject to the request if all of the following apply:

1. The land to be withdrawn is one of the following:

a. All of the owner's managed forest land within a quarter−quarter section.

b. All of the owner's managed forest land within a government lot or fractional lot as determined by the U.S. government survey plat.

2. The land remaining after the withdrawal will continue to meet the eligibility requirements under s. 77.82 (1).

(d) *Ferrous mining site.* If the land being withdrawn under this subsection is within a proposed ferrous mining site, the department shall issue the order within 30 days after receiving the request.

**(3j)** VOLUNTARY WITHDRAWAL; OTHER CONSTRUCTION; SMALL LAND SALES. (a) Except as provided in par. (b), upon the request of an owner of managed forest land to withdraw part of a parcel of the owner's land, the department shall issue an order withdrawing the land subject to the request if all of the following apply:

1. The purpose for which the owner requests that the department withdraw the land is for the sale of the land or for a construction site.

2. The land to be withdrawn is not less than one acre and not more than 5 acres. Partial acres may not be withdrawn.

3. If the land is subject to a city, village, town, or county zoning ordinance that establishes a minimum acreage for ownership of land or for a construction site, the owner requests that the department withdraw not less than that minimum acreage.

4. The land remaining after withdrawal meets the eligibility requirements under s. 77.82 (1) (a) and (b).

(b) 1. For land that is designated as managed forest land under an order with a term of 25 years, the department may not issue an order of withdrawal under par. (a) if the department has previously issued an order of withdrawal under par. (a) from that parcel of managed forest land during the term of the order.

2. For land that is designated as managed forest land under an order with a term of 50 years, the department may not issue an order of withdrawal under par. (a) if the department has previously issued 2 orders of withdrawal under par. (a) from that parcel of managed forest land during the term of the order.

(c) Upon issuance of an order withdrawing land under this subsection, the department shall assess against the owner of the land the withdrawal tax under sub. (5) and the withdrawal fee under sub. (5m).

**(3k)** VOLUNTARY WITHDRAWAL; PRODUCTIVITY. Upon the request of an owner of managed forest land to withdraw part of a parcel of the owner's land, the department shall issue an order of withdrawal if the department determines that the parcel is unable to produce merchantable timber in the amount required under s. 77.82 (1) (a) 2. The order shall withdraw only the number of acres that is necessary for the parcel to resume its ability to produce the required amount. No withdrawal tax under sub. (5) or withdrawal fee under sub. (5m) may be assessed.

**(3L)** VOLUNTARY WITHDRAWAL; SUSTAINABILITY. Upon the request of an owner of managed forest land to withdraw part of a parcel of the owner's land, the department shall issue an order of withdrawal if the department determines that the parcel is unsuitable, due to environmental, ecological, or economic concerns or factors, for the production of merchantable timber. The order shall withdraw only the number of acres that is necessary for the parcel to resume its sustainability to produce merchantable timber. No withdrawal tax under sub. (5) or withdrawal fee under sub. (5m) may be assessed.

**(3m)** WITHDRAWAL FOR FAILURE TO PAY PERSONAL PROPERTY TAXES. If an owner of managed forest land has not paid the personal property tax due for a building on managed forest land before the February settlement date under s. 74.30 (1), the municipality in which the building is located shall certify to the department that a delinquency exists and shall include the legal description of the managed forest land on which the building is located in the certification. Immediately after receiving the certification, the department shall issue an order withdrawing the land as managed forest land and shall assess against the owner of the land the withdrawal tax under sub. (5) and the withdrawal fee under sub. (5m). Notwithstanding s. 77.90, the owner is not entitled to a hearing on an order withdrawing land under this subsection.

**(4m)** EXPIRATION OF ORDERS. The department shall maintain a list of orders designating managed forest lands that have expired. The department shall add a parcel to the list within 30 days after the date of expiration. For each expired order, the list shall provide a description of the land and shall identify each municipality in which the managed forest land is located.

**(5)** WITHDRAWAL TAX. The withdrawal tax shall be determined as follows:

(ac) *Calculation of past tax liability.* For purposes of this subsection, the amount of past tax liability for land to be withdrawn from the managed forest land program, except for land that is part of a large property, shall be calculated by multiplying the total net property tax rate in the municipality in which managed forest land to be withdrawn is located in the year prior to the year in which an order withdrawing the land is issued by an amount equal to the assessed value of the land for that same year, as calculated by the department of revenue, and by then multiplying that product by 10 or by the number of years the land was designated as managed forest land, whichever number is fewer.

(ae) *Tax liability; general.* Except as provided in par. (am), for land withdrawn during a managed forest land order, the withdrawal tax shall equal the amount of past tax liability under par. (ac) that is applicable to the land.

(af) *Tax liability; large property.* Except as provided in par. (am), for land that is part of a large property that is withdrawn during a managed forest land order, the withdrawal tax shall be the higher of the following:

1. An amount equal to the past tax liability multiplied by the number of years the land was designated as managed forest land, less any amounts paid by the owner under s. 77.84 (2) (a), (am), and (bp).

2. Five percent of the stumpage value of the merchantable timber on the land, less any amounts paid by the owner under s. 77.84 (2) (a), (am), and (bp).

(am) *Converted forest croplands.* For land that is withdrawn within 10 years after the date on which an initial managed forest land order was issued under s. 77.82 (8) for an application approved under s. 77.82 (7) (d), the withdrawal tax shall be the higher of the following:

1. The amount calculated under par. (ae) or (af).

2. The amount calculated under s. 77.10 (2) that would have applied to the land on the date on which the order was issued for the land under s. 77.82 (8).

**(5g)** ESTIMATES OF WITHDRAWAL TAX. (a) Upon the request of an owner of managed forest land, the department of revenue, with the assistance of the department, shall prepare an estimate of the amount of withdrawal tax that would be assessed under sub. (5) if the department were to issue an order to withdraw the land under this section.

(b) A request from an owner under this subsection shall be accompanied by a nonrefundable fee payable to the department of revenue of either $100 or the alternative nonrefundable fee calculated under par. (c), whichever is greater.

(c) The alternative nonrefundable fee shall be calculated by multiplying the total number of whole and partial acres by $5.

**(5m)** WITHDRAWAL FEE. The withdrawal fee assessed by the department under subs. (1) (c), (2) (ac) 2., (am), and (c), (3), and (3m) shall be $300.

**(6)** DETERMINATION OF STUMPAGE VALUE. In determining the stumpage value of merchantable timber for purposes of this section, an estimator agreed upon by the parties or, if they cannot agree, a forester appointed by a judge of the circuit court in the county in which the land is located shall estimate the volume of merchantable timber on the land. The estimate obtained shall be final. The department shall determine the current stumpage value of the merchantable timber, based on the applicable stumpage value established under s. 77.91 (1). The owner shall pay the entire cost of obtaining the estimate.

**(7)** PAYMENT; DELINQUENCY. Taxes under sub. (5) and fees under sub. (5m) are due and payable to the department on the last day of the month following the effective date of the withdrawal

order. Amounts received shall be credited to the conservation fund. If the owner of the land fails to pay the tax or fee, the department shall certify to the taxation district clerk the amount due. The taxation district clerk shall enter the delinquent amount on the property tax roll as a special charge.

**(8)** EXCEPTION. (a) No withdrawal tax or withdrawal fee may be assessed against an owner who does any of the following:

1. Transfers ownership of managed forest land for a public road or railroad or utility right−of−way.

2. Transfers ownership of managed forest land for a park, recreational trail, wildlife or fish habitat area or a public forest to the federal government, the state or a local governmental unit, as defined in s. 66.0131 (1) (a).

3. Transfers ownership of or leases not more than 10 acres of managed forest land to a county, city, village, or town for siting a public safety communications tower.

(b) The department may not order withdrawal of land remaining after a transfer of ownership is made under par. (a) 1., 2., or 3. or after a lease is entered into under par. (a) 3. unless the remainder fails to meet the eligibility requirements under s. 77.82 (1).

**(9)** ORDER; MISCELLANEOUS PROVISIONS. (a) Each withdrawal order issued under this section shall include the legal description of the land withdrawn.

(b) The department shall notify the owner in writing of the withdrawal order, stating the reason for the withdrawal.

(c) The department shall mail a copy of the withdrawal order to each person specified under s. 77.82 (8).

(d) 1. Except as provided in subd. 2., a withdrawal order issued before December 15 of any year takes effect on the January 1 after the date of issuance, and a withdrawal order issued on or after December 15 of any year takes effect on the 2nd January 1 after the date of issuance.

2. An order that is issued for a withdrawal of land that is located within a proposed ferrous mining site takes effect on the date the order is issued.

(e) If less than a total parcel of managed forest land is withdrawn, the department shall amend the order under s. 77.82 and the management plan to correct the description of the remaining land.

**(10)** APPLICABLE TAXES. Chapter 70 applies to any land withdrawn from the managed forest land program under this section.

**(11)** LIABILITY FOR PREVIOUS TAXES. Withdrawal of land under this section does not affect the liability of the owner for previously levied taxes under s. 77.84.

**History:** 1985 a. 29; 1991 a. 39; 1993 a. 16, 131; 1995 a. 27; 1999 a. 150 s. 672; 2003 a. 228; 2005 a. 64, 299; 2009 a. 186, 365; 2013 a. 20, 81; 2015 a. 358.

The withdrawal provision of sub. (2) (f) is directory upon the DNR and therefore does not require the DNR to withdraw the subject property from the managed forest land program due to noncompliance with certification requirements. Warnecke v. Warnecke, 2006 WI App 62, 292 Wis. 2d 438, 713 N.W.2d 109, 05−0021.

**77.883 Ferrous mining. (1)** The department may not issue an order of withdrawal under s. 77.88 (1) based on the cutting of timber or other activities on managed forest land if all of the following requirements are met:

(a) The cutting or activity is necessary to engage in bulk sampling, as defined in s. 295.41 (7).

(b) The area that will be affected by the cutting or the activity does not exceed 5 acres.

(c) A bulk sampling plan has been filed with the department under s. 295.45 and all approvals that are required for bulk sampling have been issued by the department.

(d) The revegetation plan that is part of the bulk sampling plan described under par. (c) includes forestry practices that will ensure that the merchantable timber and other vegetation that will be cut or otherwise affected will be restored to the greatest extent possible.

**(2)** The requirement under sub. (1) (d) does not apply to managed forest land that is within a mining site described in a preapplication notification under s. 295.465 or in an application for a mining permit under s. 295.58.

**(3)** Section 77.86 (1) (c) and (d) do not apply to cutting of timber or another activity on managed forest land if all of the requirements in sub. (1) (a) to (d) are met.

**History:** 2013 a. 1.

**77.885 Withdrawal of tribal lands.** Upon request of an Indian tribe, the department shall order the withdrawal of land that is owned in fee that is designated as managed forest land from the managed forest land program. No withdrawal tax under s. 77.88 (5) or withdrawal fee under s. 77.88 (5m) may be assessed against an Indian tribe for the withdrawal of such land if all of the following apply:

**(1)** The Indian tribe provides the department the date of the order to transfer the land to the United States to be held in trust for the tribe.

**(2)** The tribe and the department have in effect a written agreement under which the tribe agrees that the land shall continue to be treated as managed forest land until the date on which the managed forest land order would have expired.

**History:** 2009 a. 28.

**77.89 Distribution of moneys received. (1)** PAYMENT TO MUNICIPALITIES. (a) By June 30 of each year, the department, from the appropriation under s. 20.370 (5) (bv), shall pay 100 percent of each payment received under s. 77.84 (3) (b) and 100 percent of each withdrawal tax payment received under s. 77.88 (7) to the treasurer of each municipality in which is located the land to which the payment applies.

(b) The department shall distribute from the appropriation under s. 20.370 (1) (mv) of the statutes $1,000,000 in fiscal year 2015−16 and $1,000,000 in fiscal year 2016−17 among treasurers of each municipality in which is located land subject to a managed forest land order that is designated as closed to public access under s. 77.83 (1). The department shall distribute to each municipal treasurer an amount in proportion to the number of acres of closed land in that municipality. The department shall make the payments for fiscal year 2015−16 before July 1, 2016. The department shall make the payments for fiscal year 2016−17 before July 1, 2017.

(c) The department shall distribute from the appropriation under s. 20.370 (5) (dy) $4,600,000 in fiscal year 2016−17, $6,000,000 in fiscal year 2017−18, and $7,000,000 in fiscal year 2018−19 among treasurers of each municipality in which is located land subject to a managed forest land order that is designated as closed to public access under s. 77.83 (1). The department shall distribute to each municipal treasurer an amount in proportion to the number of acres of closed land in that municipality.

**(2)** PAYMENT TO COUNTIES. (a) Each municipal treasurer shall pay 20 percent of each payment received under sub. (1) (a), (b), and (c) and under ss. 77.84 (2) (a), (am), and (bp), 77.85, and 77.876 to the county treasurer and shall deposit the remainder in the municipal treasury. The payment to the county treasurer for money received before November 1 of any year shall be made on or before the November 15 after its receipt. For money received on or after November 1 of any year, the payment to the county treasurer shall be made on or before November 15 of the following year.

(b) The municipal treasurer shall pay all amounts received under s. 77.84 (2) (b) and (bm) to the county treasurer, as provided under ss. 74.25 and 74.30. The county treasurer shall, by June 30 of each year, pay all amounts received under this paragraph to the department. All amounts received by the department shall be credited to the conservation fund and shall be reserved for land acquisition, resource management activities, and grants under s. 77.895.

**History:** 1985 a. 29; 1987 a. 378; 1991 a. 39; 1995 a. 27; 2003 a. 228, 327; 2005 a. 253, 299; 2007 a. 20; 2013 a. 81; 2015 a. 55, 358.

"Each municipality" in sub. (1) means every municipality where the property is presently located, not every municipality where the property has ever been located.

When a parcel was annexed by a village and removed from the program, the village, and not the town that previously contained the parcel, was entitled to the withdrawal tax payment under sub. (1). Town of Somerset v. Department of Natural Resources, 2011 WI App 55, 332 Wis. 2d 777, 798 N.W.2d 282, 10−1501.

**77.895 Grants for land acquisitions for outdoor activities. (1)** DEFINITIONS. In this section:

(b) "Land" means land in fee simple, conservation easements, and other easements in land.

(c) "Local governmental unit" means a city, village, town, or county.

(d) "Nonprofit conservation organization" has the meaning given in s. 23.0955 (1).

**(2)** PROGRAM. The department shall establish and administer a program to award grants to nonprofit conservation organizations, to local governmental units, and to itself to acquire land to be used for hunting, fishing, hiking, sightseeing, and cross−country skiing.

**(3)** REQUIREMENTS. The department shall promulgate rules establishing requirements for awarding grants under this section. The rules promulgated under this subsection shall include all of the following:

(a) A requirement that the department give higher priority to counties over other grant applicants in awarding grants under this section.

(b) A requirement that, in awarding grants to counties under this section, the department give higher priority to counties that have higher numbers of acres that are designated as closed under s. 77.83.

(c) A requirement that, in awarding grants to towns under this section, the department give higher priority to towns that have higher numbers of acres that are designated as closed under s. 77.83.

(d) A requirement that no grant may be awarded under this section without it being approved by the board of each county in which the land to be acquired is located.

(e) Requirements concerning the use of sound forestry practices on land acquired under this section.

(fm) A requirement that no more than 10 percent of grant funding available under this section may be used to acquire parcels of land that are less than 10 acres in size.

(gm) A requirement that land acquired with a grant under this section be open to hunting, fishing, and trapping during all applicable hunting, fishing, and trapping seasons.

**(4)** USE OF LAND. Land acquired under this section may be used for purposes in addition to those specified in sub. (2) if the additional uses are compatible with the purposes specified in sub. (2).

**History:** 2007 a. 20; 2015 a. 55.

**77.90 Right to hearing.** An applicant under s. 77.82 or an owner of managed forest land who is adversely affected by a decision of the department under this subchapter is entitled to a contested case hearing under ch. 227.

**History:** 1985 a. 29; 2009 a. 365.

**77.905 Procedure in forfeiture actions.** The procedure in ss. 23.50 to 23.85 applies to actions to recover forfeitures brought under this subchapter.

**History:** 1989 a. 79.

**77.91 Miscellaneous provisions. (1)** STUMPAGE VALUES. Each year the department shall establish reasonable stumpage values for the merchantable timber grown in the municipalities in which managed forest land is located. If the department finds that stumpage values vary in different parts of the state, it may establish different zones and specify the stumpage value for each zone. The stumpage value shall take effect on November 1 of each year. Notwithstanding s. 227.11, the department may not promulgate or have in effect rules that established stumpage values.

**(2)** PUBLICATION OF INFORMATION. (a) The department, with the cooperation of the University of Wisconsin−Extension, shall publish and distribute information describing the managed forest land program, including the applicable taxes and penalties and the forestry and resource management practices that are acceptable as part of a management plan.

(b) The department shall prepare, update annually and, by March 31 of each year, offer for sale to the public information describing the location of managed forest land designated as open under s. 77.83.

**(3m)** REPORT TO LEGISLATURE. Beginning with calendar year 2015, the department shall calculate for each calendar year whether the amount of land exempt from penalty or tax under s. 77.10 (2) (c) or 77.88 (8) that is withdrawn during that calendar year under s. 77.10 or 77.88 exceeds 1 percent of the total amount of land that is subject to contracts under subch. I or subject to orders under this subchapter on December 31 of that calendar year. If the amount of withdrawn or classified land that is so exempt exceeds 1 percent, the department shall make a report of its calculations to the governor and the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3).

**(4)** EXPENSES. Except as provided in sub. (5), the department's expenses for the administration of this subchapter shall be paid from the appropriation under s. 20.370 (1) (mv).

**(5)** RECORDING. Each register of deeds who receives notice of an order under this subchapter shall record the action as provided under s. 59.43 (1c). The department shall pay the register of deeds the fee specified under s. 59.43 (2) (ag) 1. from the appropriation under s. 20.370 (1) (cr). If the amount in the appropriation under s. 20.370 (1) (cr) in any fiscal year is insufficient to pay the full amount required under this subsection in that fiscal year, the department shall pay the balance from the appropriation under s. 20.370 (1) (mv).

**(6)** SIGNATURES. (a) The signature of an official or an employee of the department may be stamped, printed or otherwise reproduced on an order under this subchapter after the official or employee adopts the stamped, printed or otherwise reproduced signature as his or her facsimile signature.

(b) The signature or the facsimile signature under par. (a) of an official or an employee of the department meets the requirements under s. 706.05 (2) (a).

(c) The requirements of s. 706.05 (2) (b) do not apply to orders issued under this subchapter.

(d) Any signature required of an official or employee of the department or a landowner under this subchapter may be satisfied by an electronic signature, as defined in s. 137.11 (8).

**(7)** CERTIFICATION GROUP OPT–IN. If the department establishes a group certification program under which land designated as managed forest land may be certified as meeting certain forest management standards, the department may enroll managed forest land in the program only if the owner of the managed forest land affirmatively elects to have the land enrolled.

**(8)** EMERGENCY RULES. The department may use the procedure under s. 227.24 to promulgate emergency rules under s. 77.82 (1) (bp) 2. f. for the period before the date on which permanent rules under s. 77.82 (1) (bp) 2. f. take effect. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this subsection remain in effect until the first day of the 25th month beginning after the effective date of the emergency rule or the date on which the permanent rules take effect, whichever is earlier. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for rules promulgated under this subsection.

**History:** 1985 a. 29; 1987 a. 186; 1991 a. 39; 1993 a. 16; 1995 a. 27, 201, 225; 2003 a. 33; 2009 a. 365; 2013 a. 54; 2015 a. 55, 196, 358.

SUBCHAPTER VII

ECONOMIC DEVELOPMENT SURCHARGE

**77.92 Definitions.** In this subchapter:

**(1m)** "File" means mail or deliver a document that the department prescribes to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

**(3)** "Gross tax liability" means a corporation's tax liability under ch. 71, without regard to any tax credit.

**History:** 1989 a. 335; 1991 a. 39, 269; 1993 a. 16, 112, 490; 1995 a. 27, 209; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 99, 135, 255, 326; 2005 a. 74, 361, 479, 483; 2007 a. 20, 96; 2009 a. 2, 28, 265, 269, 295, 332; 2011 a. 32, 212; 2011 a. 260 s. 80; 2013 a. 20.

**77.93 Applicability.** For the privilege of doing business in this state, there is imposed an economic development surcharge on the following entities:

**(1)** All corporations required to file a return under subch. IV or V of ch. 71 that have at least $4,000,000 in gross receipts from all activities for the taxable year except corporations that are exempt from taxation under s. 71.26 (1) and that have no unrelated business income reportable under s. 71.24 (1m). The surcharge is imposed on the tax−option corporation, not on its shareholders, except that if a tax−option corporation's surcharge is delinquent, its shareholders are jointly and severally liable for it.

**(4)** All insurers that are required to file a return under subch. VII of ch. 71 and that have at least $4,000,000 in gross receipts from all activities for the taxable year.

**History:** 1989 a. 335; 1991 a. 39, 269; 1993 a. 16, 112; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2011 a. 32; 2013 a. 20.

**Cross−reference:** See also s. Tax 2.32, Wis. adm. code.

This section does not violate the constitutional guaranty of equal protection. Love, Voss & Murray v. DOR, 195 Wis. 2d 189, 536 N.W.2d 189 (Ct. App. 1995), 94−2185.

**77.935 Single−owner entities.** A single−owner entity that is disregarded as a separate entity under ch. 71 is disregarded as a separate entity under this subchapter. The owner of that entity shall include the information from the entity on the owner's return under this subchapter.

**History:** 1997 a. 27.

**77.94 Surcharge determination. (1)** Except as provided in sub. (2), the surcharge imposed under s. 77.93 is an amount equal to the amount calculated by multiplying gross tax liability for the taxable year of the corporation by 3 percent, or in the case of a tax−option corporation an amount equal to the amount calculated by multiplying net income under s. 71.34 by 0.2 percent, up to a maximum of $9,800, or $25, whichever is greater.

**(2)** (a) In this subsection:

1. "Begins to do business" includes but is not limited to a change in corporate form and the occurrence of any event that creates a short taxable year for purposes of the taxes under ch. 71.

2. "Ceases to do business" includes but is not limited to a change in corporate form and the occurrence of any event that creates a short taxable year for purposes of the taxes under ch. 71.

(b) If an entity begins to do business in this state after the beginning of its taxable year or ceases to do business in this state before the end of its taxable year, subject to the maximum and minimum surcharge, the surcharge imposed on it under s. 77.93 is calculated as follows:

1. Multiply its gross tax liability for the taxable year by a fraction the numerator of which is 365 and, if the entity begins to do business in this state after the beginning of its taxable year, the denominator of which is the number of days from the day that it begins to do business in this state until the end of its taxable year and, if the entity ceases to do business in this state before the end of its taxable year, the denominator of which is the number of days from the beginning of its taxable year until the day that it ceases to do business in this state and, if the entity both begins to do business in this state after the beginning of its taxable year and ceases to do business in this state before the end of its taxable year, the denominator of which is the number of days from the day that it begins to do business in this state to the day that it ceases to do business in this state.

2. Determine the surcharge that would be imposed under sub. (1) on the amount calculated under subd. 1.

3. Divide the surcharge under subd. 2. by the fraction under subd. 1.

**History:** 1989 a. 335; 1991 a. 39, 60; 1993 a. 16; 1999 a. 9; 2001 a. 16; 2013 a. 20.

**Cross−reference:** See also s. Tax 2.32, Wis. adm. code.

**77.95 Interest and penalties.** The interest and penalty provisions under ss. 71.82 (1) (a) and (b) and (2) (a) and (b), 71.83 (1) (a) 1., 2. and 7. and (b) 1., (2) (a) 1. to 3m. and (b) 1. to 3. and (3) and 71.85, as they apply to the taxes under ch. 71, apply to the surcharge under this subchapter.

**History:** 1989 a. 335; 1991 a. 39; 1993 a. 16; 2011 a. 68.

**77.96 Administration. (1)** An entity's taxable year for the surcharge under this subchapter is the same as the entity's taxable year for the taxes under ch. 71.

**(2)** The surcharge under this subchapter is due on the date on which the entity's return under ch. 71 is due without regard to any extension.

**(3)** The department of revenue shall levy, enforce and collect the surcharge under this subchapter.

**(4)** Sections 71.74 (1) to (3), (6), (7) and (9) to (15), 71.75 (1), (2), (4), (5) and (6) to (10), 71.76, 71.77, 71.78 (1) to (8), 71.80 (1) (a) to (d), (3), (3m), (6), (8) to (12), (14) and (18), 71.87, 71.88, 71.89, 71.90, 71.91 and 71.93, as they apply to the taxes under ch. 71, apply to the surcharge under this subchapter.

**(5)** Each person subject to a surcharge under s. 77.93 shall, on or before the due date, including extensions, for filing under ch. 71, file an accurate statement of its gross tax liability. Payments made after the due date under sub. (2) and on or before the due date under this subsection are not delinquent but are subject to interest at the rate of 12 percent per year.

**(5m)** Persons who owe amounts under this subchapter shall mail or deliver those amounts to the department of revenue or, if that department prescribes another method of submitting or another destination, those persons shall use that other method or submit those amounts to that other destination.

**(6)** The department of revenue shall refer to the surcharge under this subchapter as the economic development surcharge.

**History:** 1989 a. 335; 1991 a. 39, 269, 315; 1993 a. 16; 1997 a. 27; 1999 a. 9; 2011 a. 32; 2013 a. 20.

**77.97 Use of revenue.** The department of revenue shall deposit the surcharge, interest and penalties collected under this subchapter in the economic development fund under s. 25.49.

**History:** 1989 a. 335; 1991 a. 39; 2007 a. 20; 2011 a. 32.

SUBCHAPTER VIII

LOCAL FOOD AND BEVERAGE TAX

**77.98 Imposition. (1)** A local exposition district under subch. II of ch. 229 may impose a tax on the retail sale, except sales for resale, within the district's jurisdiction under s. 229.43 of all of the following:

(a) Alcoholic beverages, as defined in s. 77.51 (1b), if the alcoholic beverages are for consumption on the seller's premises.

(b) Candy, as defined in s. 77.51 (1fm).

(c) Prepared food, as defined in s. 77.51 (10m).

(d) Soft drinks, as defined in s. 77.51 (17w).

**(2)** The items described under sub. (1) (a) to (d) are not subject to tax if they qualify for an exemption from the sales tax under s. 77.54 (1), (4), (7) (a), (7m), (9), (9a), (20n) (b) or (c), or (20r).

**(3)** Except as provided in sub. (4), for purposes of sub. (1) (a), "premises" shall be broadly construed and shall include the lobby, aisles, and auditorium of a theater or the seating, aisles, and parking area of an arena, a rink, or a stadium, or the parking area of a drive−in or an outdoor theater. The premises of a caterer with respect to catered meals or beverages shall be the place where served.

**(4)** (a) Except as provided in par. (b), the tax imposed under this section shall not be imposed on the sale of alcoholic beverages, candy, prepared food, or soft drinks sold by a person engaged in the retail trade as a food and beverage store, as classified under sector 44−45, subsector 445, of the North American Industry Classification System, 1997 edition, published by the U.S. office of management and budget, beginning on the first day of the calendar quarter that is at least 120 days after the date on which the bonds issued by the district under subch. II of ch. 229 during the first 60 months after April 26, 1994, and any debt issued to fund or refund those bonds, are retired. The district shall notify the department of revenue, in the manner prescribed by the department, when such bonds and debt are retired.

(b) Notwithstanding par. (a), the district board may, by a majority vote of its members, reimpose the tax under this section on a person engaged in a retail trade, as described under par. (a).

**History:** 1993 a. 263; 2009 a. 2, 330; 2015 a. 60.

**77.981 Rate.** The tax under s. 77.98 is imposed on the sale of taxable products at the rate of 0.25 percent of the sales price, except that the district, by a vote of a majority of the authorized members of its board of directors, may impose the tax at the rate of 0.5 percent of the sales price. A majority of the authorized members of the district's board may vote that, if the balance in a special debt service reserve fund of the district is less than the requirement under s. 229.50 (5), the tax rate under this subchapter is 0.5 percent. The 0.5 percent rate shall be effective on the next January 1, April 1, July 1 or October 1, and this tax is irrepealable if any bonds issued by the district and secured by the special debt service reserve fund are outstanding.

**History:** 1993 a. 263; 2009 a. 2.

**77.9815 Exemption.** Any retailer whose liability for the tax under this subchapter would be less than $5 for a year is exempt from that tax for that year.

**History:** 1997 a. 27.

**77.982 Administration. (1)** The department of revenue shall administer the tax under this subchapter and may take any action, conduct any proceeding and impose interest and penalties.

**(2)** Sections 77.51 (1f), (3pf), (9p), (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3), (5), (13), (14), and (18) to (23), 77.54 (51) and (52), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (6), (8), (9), (12) to (15), and (19m), and 77.62, as they apply to the taxes under subch. III, apply to the tax under this subchapter. Section 77.73, as it applies to the taxes under subch. V, applies to the tax under this subchapter.

**(3)** From the appropriation under s. 20.835 (4) (gg), the department of revenue shall distribute 97.45 percent of the taxes collected under this subchapter for each district to that district and shall indicate to the district the taxes reported by each taxpayer in that district, no later than the end of the month following the end of the calendar quarter in which the amounts were collected. The taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments, and all other adjustments. Interest paid on refunds of the tax under this subchapter shall be paid from the appropriation under s. 20.835 (4) (gg) at the rate under s. 77.60 (1) (a). Those taxes shall first be used for the district's debt service on its bond obligations, as described in s. 77.98 (4). After such obligations are retired, the district may use the taxes for any lawful purpose. Any district that receives a report along with a payment under this subsection is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5) and (6).

**(4)** Persons who are subject to the tax under this subchapter shall register with the department of revenue. Any person who is required to register; including any person authorized to act on behalf of a corporation, partnership or other person who is required to register; who fails to do so is guilty of a misdemeanor.

**History:** 1993 a. 263, 491; 1999 a. 9; 2003 a. 203; 2007 a. 20; 2009 a. 2, 330; 2011 a. 18, 68; 2013 a. 20; 2015 a. 60.

## SUBCHAPTER IX

## LOCAL RENTAL CAR TAX

**77.99 Imposition.** A local exposition district under subch. II of ch. 229 may impose a tax at the rate of 3 percent of the sales price on the rental, but not for rerental and not for rental as a service or repair replacement vehicle, within the district's jurisdiction under s. 229.43, of Type 1 automobiles, as defined in s. 340.01 (4) (a), by establishments primarily engaged in short−term rental of passenger cars without drivers, for a period of 30 days or less, unless the sale is exempt from the sales tax under s. 77.54 (1), (4), (7) (a), (7m), (9) or (9a). If the state makes a payment under s. 229.50 (7) to a district's special debt service reserve fund, a majority of the district's authorized board of directors may vote to increase the tax rate under this subchapter to 4 percent. A resolution to adopt the taxes imposed under this section, or an increase in the tax rate, shall be effective on the first January 1, April 1, July 1, or October 1 following the adoption of the resolution or tax increase.

**History:** 1993 a. 263; 2009 a. 2.

**77.991 Administration. (1)** The department of revenue shall administer the tax under this subchapter and may take any action, conduct any proceeding and impose interest and penalties.

**(2)** Sections 77.51 (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3), (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (6), (8), (9), (12) to (15), and (19m), and 77.62, as they apply to the taxes under subch. III, apply to the tax under this subchapter. Section 77.73, as it applies to the taxes under subch. V, applies to the tax under this subchapter. The renter shall collect the tax under this subchapter from the person to whom the passenger car is rented.

**(3)** From the appropriation under s. 20.835 (4) (gg), the department of revenue shall distribute 97.45 percent of the taxes collected under this subchapter for each district to that district and shall indicate to the district the taxes reported by each taxpayer in that district, no later than the end of the month following the end of the calendar quarter in which the amounts were collected. The taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments, and all other adjustments. Interest paid on refunds of the tax under this subchapter shall be paid from the appropriation under s. 20.835 (4) (gg) at the rate under s. 77.60 (1) (a). Those taxes may be used only for the district's debt service on its bond obligations. Any district that receives a report along with a payment under this subsection is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5).

**(4)** Persons who are subject to the tax under this subchapter shall register with the department of revenue. Any person who is required to register; including any person authorized to act on behalf of a corporation, partnership or other person who is required to register; who fails to do so is guilty of a misdemeanor.

**History:** 1993 a. 263; 1999 a. 9; 2003 a. 203; 2007 a. 20; 2009 a. 2, 330; 2011 a. 18, 68; 2013 a. 20.

## SUBCHAPTER X

## PREMIER RESORT AREA TAXES

**77.994 Premier resort area tax. (1)** Except as provided in subs. (2) and (3), a municipality or a county all of which is included in a premier resort area under s. 66.1113 may, by ordi-

nance, impose a tax at a rate of 0.5 percent of the sales price from the sale, license, lease, or rental in the municipality or county of property, items, goods, or services that are taxable under subch. III made by businesses that are classified in the standard industrial classification manual, 1987 edition, published by the U.S. office of management and budget, under the following industry numbers:

(ad) 5311 — Department stores.

(am) 5331 — Variety stores.

(b) 5399 — Miscellaneous general merchandise stores.

(c) 5441 — Candy, nut and confectionary stores.

(d) 5451 — Dairy product stores.

(e) 5461 — Retail bakeries.

(em) 5499 — Miscellaneous food stores.

(f) 5541 — Gasoline service stations.

(fa) 5611 — Men's and boys' clothing and accessory stores.

(fb) 5621 — Women's clothing stores.

(fc) 5632 — Women's accessory and specialty stores.

(fd) 5641 — Children's and infants' wear stores.

(fe) 5651 — Family clothing stores.

(ff) 5661 — Shoe stores.

(fg) 5699 — Miscellaneous apparel and accessory stores.

(g) 5812 — Eating places.

(h) 5813 — Drinking places.

(i) 5912 — Drug stores and proprietary stores.

(j) 5921 — Liquor stores.

(k) 5941 — Sporting goods stores and bicycle shops.

(ka) 5942 — Bookstores.

(kb) 5943 — Stationery stores.

(kc) 5944 — Jewelry stores.

(kd) 5945 — Hobby, toy, and game shops.

(L) 5946 — Camera and photographic supply stores.

(m) 5947 — Gift, novelty and souvenir shops.

(ma) 5948 — Luggage and leather goods stores.

(mb) 5949 — Sewing, needlework, and piece goods stores.

(mc) 5992 — Florists.

(md) 5993 — Tobacco stores and stands.

(me) 5994 — News dealers and newsstands.

(mf) 5999 — Miscellaneous retail stores.

(n) 7011 — Hotels and motels.

(o) 7032 — Sporting and recreational camps.

(p) 7033 — Recreational vehicle parks and campsites.

(pa) 7922 — Theatrical producers (except motion picture) and miscellaneous theatrical services.

(pb) 7929 — Bands, orchestras, actors, and other entertainers and entertainment groups.

(q) 7948 — Racing, including track operation.

(qa) 7991 — Physical fitness facilities.

(r) 7992 — Public golf courses.

(s) 7993 — Coin−operated amusement devices.

(t) 7996 — Amusement parks.

(ta) 7997 — Membership sports and recreation clubs.

(u) 7999 — Amusement and recreational services, not elsewhere classified.

**(2)** Either a county or a municipality within that county, but not both, may impose a tax under sub. (1).

**(3)** (a) Any municipality that enacted an ordinance imposing the tax under sub. (1) that became effective before January 1, 2000, may amend the ordinance to increase the tax rate under this section to 1 percent. The amended ordinance is effective on the dates provided under s. 77.9941 (1).

(b) 1. Subject to subd. 2., any municipality that enacted an ordinance imposing the tax under sub. (1) that became effective before January 1, 2000, may amend the ordinance to increase the tax rate under this section to a maximum of 1.25 percent. The amended ordinance is effective on the dates provided under s. 77.9941 (1).

2. Before an amendment to an ordinance that is described in subd. 1. may take effect, all of the following must occur:

a. The governing body of the municipality must adopt a resolution proclaiming its intent to increase the rate of premier resort area tax.

b. The resolution must be approved by a majority of the electors in the municipality voting on the resolution at a referendum, to be held at the first spring primary or election or partisan primary or general election following by at least 70 days the date of adoption of the resolution.

**(4)** (a) Except as provided in par. (b), no seller or certified service provider, as defined in s. 77.51 (1g), is liable for the tax, interest, or penalties imposed under this subchapter on a transaction in which the seller or certified service provider charged and collected the incorrect amount of tax imposed under this subchapter on the sale of a product that was shipped to the purchaser's location within a premier resort area, until such time as a database identifying the addresses subject to each premier resort area tax is available to all sellers and certified service providers.

(b) The relief from liability described in par. (a) does not apply to transactions which are sourced to the seller's place of business under s. 77.522 (1) (b) 1.

**History:** 1997 a. 27; 1999 a. 150 s. 672; 2001 a. 30; 2005 a. 25; 2009 a. 2, 28; 2013 a. 20.

**77.9941 Administration. (1)** The ordinance under s. 77.994 is effective on January 1, April 1, July 1 or October 1. The municipality or county shall deliver a certified copy of that ordinance, or an amended ordinance under s. 77.994 (3), to the secretary of revenue at least 120 days before its effective date.

**(3)** A municipality or county that imposes a tax under s. 77.994 may repeal that ordinance. A repeal is effective on December 31. The municipality or county shall deliver a certified copy of the repeal ordinance to the secretary of revenue at least 60 days before its effective date.

**(3m)** (a) The department of revenue may promulgate rules interpreting the classifications under s. 77.994 (1) and specifying means of determining the classifications of business. If there is a dispute whether a business is in one of the classifications under s. 77.994 (1), the department of revenue's decision is final.

(b) The department of revenue shall provide appropriate guidance regarding the application of the tax imposed under this subchapter to all persons who hold a sales tax permit issued by the department. Any retail outlet that would have been classified as a tourism related retailer under s. 77.994 (1), but for the fact that it is a retail outlet for a manufacturer or wholesaler, shall be considered a tourism related retailer for purposes of s. 77.994 (1).

**(4)** Sections 77.72, 77.73, 77.74, 77.75, 77.76 (1), (2), and (4), 77.77 (1), 77.785 (1), and 77.79, as they apply to the taxes under subch. V, apply to the tax under this subchapter.

**(5)** From the appropriation under s. 20.835 (4) (gd) the department shall distribute 97 percent of the taxes under this subchapter reported, for each municipality or county that has imposed the tax, minus the municipality's or county's portion of the retailers' discounts, to the municipality or county and shall indicate the taxes reported by each taxpayer, no later than the end of the 3rd month following the end of the calendar quarter in which such amounts were reported. In this subsection, the "municipality's or county's portion of the retailers' discount" is the amount determined by multiplying the total retailers' discount by a fraction the numerator of which is the gross sales and use taxes payable under this subchapter and the denominator of which is the sum of the gross state sales and use taxes and the sales taxes and use taxes payable under this subchapter. The taxes under this subchapter distributed shall

be increased or decreased to reflect subsequent refunds, audit adjustments and all other adjustments of the taxes under this subchapter previously distributed. Interest paid on refunds of sales and use taxes under this subchapter shall be paid from the appropriation under s. 20.835 (4) (gd) at the rate paid by this state under s. 77.60 (1) (a). Any municipality or county receiving a report under this subsection is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5) and (6).

**History:** 1997 a. 27; 2005 a. 25; 2009 a. 2, 28; 2011 a. 68.

SUBCHAPTER XI

STATE RENTAL VEHICLE FEE

**77.995 Imposition. (1)** In this section:

(a) Except as provided in par. (b), "limousine" means a passenger automobile that has a capacity of 10 or fewer persons, excluding the driver; that has a minimum of 5 seats behind the driver; and that is operated for hire on an hourly basis under a prearranged contract for the transportation of passengers on public roads and highways along a route under the control of the person who hires the vehicle and not over a defined regular route.

(b) "Limousine" does not include taxicabs, hotel or airport shuttles or buses, buses employed solely in transporting school children or teachers, vehicles owned and operated without charge or remuneration by a business entity for its own purposes, vehicles used in car pools or van pools, public agency vehicles that are not operated as a commercial venture, vehicles operated as part of the employment transit assistance program under s. 106.26, ambulances or any vehicle that is used exclusively in the business of funeral directing.

**(2)** There is imposed a fee at the rate of 5 percent of the sales price on the rental, but not for rerental and not for rental as a service or repair replacement vehicle of Type 1 automobiles, as defined in s. 340.01 (4) (a); of recreational vehicles, as defined in s. 340.01 (48r); of motor homes, as defined in s. 340.01 (33m); and of camping trailers, as defined in s. 340.01 (6m) by establishments primarily engaged in short−term rental of vehicles without drivers, for a period of 30 days or less, unless the sale is exempt from the sales tax under s. 77.54 (1), (4), (7) (a), (7m) or (9a). There is also imposed a fee at the rate of 5 percent of the sales price on the rental of limousines.

**History:** 1997 a. 27, 237; 1999 a. 80, 83, 186; 2001 a. 105; 2005 a. 25; 2007 a. 11; 2009 a. 2.

**77.9951 Administration. (1)** The department of revenue shall administer the fee under this subchapter and may take any action, conduct any proceeding and impose interest and penalties.

**(2)** Sections 77.51 (3r), (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3), (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (6), (8), (9), (12) to (15), and (19m), and 77.62, as they apply to the taxes under subch. III, apply to the fee under this subchapter. The renter shall collect the fee under this subchapter from the person to whom the vehicle is rented.

**(3)** Persons who are subject to the fee under this subchapter shall register with the department of revenue. Any person who is required to register; including any person authorized to act on behalf of a corporation, partnership or other person who is required to register; who fails to do so is guilty of a misdemeanor.

**History:** 1997 a. 27; 2007 a. 20; 2009 a. 2, 28, 330; 2011 a. 18, 68; 2013 a. 20.

SUBCHAPTER XII

DRY CLEANING FEES

**77.996 Definitions.** In this subchapter:

**(1)** "Department" means the department of revenue.

**(2)** "Dry cleaning facility" means a facility that cleans apparel or household fabrics for the general public using a dry cleaning product, other than the following facilities:

(a) Coin−operated facilities.

(b) Facilities that are located on U.S. military installations.

(c) Industrial laundries.

(d) Commercial laundries.

(e) Linen supply facilities.

(f) Facilities that are located at a prison or other penal institution.

(g) Facilities that are located at a nonprofit hospital or at a nonprofit health care institution.

(h) Facilities that are located on property that is owned by the U.S. government or by this state.

(i) Formal wear rental firms.

**(3)** "Dry cleaning product" means a hazardous substance used to clean apparel or household fabrics, except a hazardous substance used to launder apparel or household products.

**(4)** "Formal wear" includes tuxedos, suits and dresses, but does not include costumes, table linens or household fabrics.

**(5)** "Formal wear rental firm" means a facility that rents formal wear to the general public and dry cleans only the formal wear that it rents to the general public.

**(6)** "Gross receipts" means the sales price, as defined in s. 77.51 (15b), except as provided in s. 77.585 (7), of tangible personal property and taxable services sold by a dry cleaning facility. "Gross receipts" does not include the license fee imposed under s. 77.9961 (1m) that is passed on to customers.

**(7)** "Launder" means to use water and detergent as the main process for cleaning apparel or household fabrics.

**History:** 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 312; 2005 a. 253; 2009 a. 2; 2013 a. 20.

**77.9961 License and fee. (1)** (a) No person may operate a dry cleaning facility in this state unless the person completes and submits to the department an application for a license on a form that the department prescribes.

(b) The department may require, before or after the license is issued, that any person who submits an application for a license under par. (a) provide a security deposit to the department. For purposes of this paragraph, s. 77.61 (2), as it applies to a security deposit related to a seller's permit, applies to the security deposit required under this subsection.

(c) Subject to par. (b), the department shall issue a license to each person who completes and submits an application for a license under par. (a). If a dry cleaning facility is sold, the seller may transfer the license to the buyer. A license is valid until the license is surrendered by the person to whom the license was issued or transferred or until the license is revoked by the department as provided in par. (e). A license is valid only for the facility designated by the license and the license holder shall display the license prominently in the facility to which the license applies.

(d) Section 77.52 (12), as it applies to a person who operates as a seller without a seller's permit, applies to a person who operates a dry cleaning facility without a license issued under this subsection.

(e) The department may revoke a license issued under this subsection if the person who holds the license fails to comply with any provision of this subchapter related to the fees imposed under this subchapter or any rule promulgated by the department related to the fees imposed under this subchapter, is delinquent with respect to taxes imposed by the department, or fails to timely file a return or report with respect to taxes imposed under chs. 71, 72, 76, 77, 78, or 139 after having been requested to file the return or report. Section 77.52 (11), as it applies to revoking a seller's permit, applies to revoking a license issued under this subsection.

**(1m)** Every person operating a dry cleaning facility shall pay to the department a fee for each dry cleaning facility that the per-

son operates. The fee shall be paid in installments, as provided in sub. (2), and each installment is equal to 2.8 percent of the gross receipts from the previous 3 months from dry cleaning apparel and household fabrics, but not from formal wear the facility rents to the general public.

**(2)** Persons who owe a fee under this section shall pay it in installments on or before April 25, July 25, October 25 and January 25.

**(3)** The department shall mail to each dry cleaning facility of which it is aware a form on which to apply for a license under this section.

**History:** 1997 a. 27; 1999 a. 9; 2003 a. 312, 326; 2007 a. 20, 96.

**77.9962 Dry cleaning products fee.** There is imposed on each person who sells a dry cleaning product to a dry cleaning facility a fee equal to $5 per gallon of perchloroethylene sold and 75 cents per gallon of any dry cleaning product sold, other than perchloroethylene. The fees for the previous 3 months are due on January 25, April 25, July 25, and October 25.

**History:** 1997 a. 27; 2001 a. 16.

**77.9964 Administration. (1)** The department shall administer the fees under this subchapter.

**(2)** Except as provided in s. 77.9961 (1) (b), (d), and (e), ss. 71.74 (1) to (3), (7), (9), and (10) to (12), 71.75 (1), (2), (6), (7), (9), and (10), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2. and (b) 1., 2., and 6., (2) (a) 1. to 3m. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90, 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under ch. 71 apply to the fees under this subchapter.

**(3)** The department shall deposit all of the revenue that it collects under this subchapter in the fund under s. 25.48.

**(4)** The department shall reimburse the owner or operator of a formal wear rental firm an amount equal to the sum of any fees paid by the owner or operator under s. 77.9961 (1) prior to October 29, 1999.

**History:** 1997 a. 27; 1999 a. 9; 2003 a. 312; 2011 a. 68.

**77.9965 Sunset.** This subchapter does not apply after June 30, 2032.

**History:** 1997 a. 27.