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 Details: Miscellaneous reports

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## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

**2005-06**

(session year)

**Senate**

(Assembly, Senate or Joint)

**Committee on Natural Resources and  
Transportation...**

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**Examples: 1)** A paper manufacturer's purchases of negatives which it transfers to a printer, who uses the negatives exclusively and directly to produce printing which the printer sells to the paper manufacturer are exempt from the tax.

**2)** An advertising agency's purchases of color separations which are furnished to a commercial printer who uses the color separations exclusively and directly to produce advertising material the printer sells to the advertising agency are exempt from the tax.

(7)(a) ~~An~~ The exemption under s. 77.54 (2m), Stats., applies for to 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 the shoppers guides, newspapers, or periodicals or that are consumed or lose their identity in the manufacture of the shoppers guides, newspapers, or periodicals, whether or not they are transferred without charge to a recipient.

(b)(intro.) Section 77.54 (43), Stats., provides that Wisconsin sales or use tax is not imposed on raw materials if both of the following conditions are met:

1. The raw materials are processed, fabricated, or manufactured into, attached to, or incorporated into printed materials.

**SECTION 163.** Tax 11.56(7)(bm) is created to read:

Tax 11.56(7)(bm) Section 77.52 (2) (a) 11., Stats., provides that the tax does not apply to the service of printing or imprinting tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that results in printed material, catalogs, or envelopes that are exempt under s. 77.54 (25) or (25m), Stats.

**Example:** Company Z purchases paper that is used to print catalogs that are designed to advertise and promote the sale of Company Z's merchandise. The paper is delivered to Company X, a Wisconsin printer, that prints the catalogs for Company Z. The catalogs are shipped both in and outside Wisconsin. The charge by Company X to Company Z for the printing of the catalogs is not taxable. However, Company Z owes tax on its purchase of the paper that it provides to Company X for those catalogs that are not shipped outside Wisconsin for use solely outside Wisconsin. Company Z's purchase of the paper for those catalogs that are shipped outside Wisconsin is exempt as provided in par. (b).

**SECTION 164.** Tax 11.56(7)(c) is amended to read:

Tax 11.56(7)(c) The tax applies to purchases of artwork, single color or multicolor separations, negatives, flats, and similar items if those purchases are used in the manufacture of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., not to be sold, other than items exempt under par. (a) or (b). A printer who does not supply paper used in printing tangible personal property is not selling tangible personal property but rather, is selling a service.

**Note to LRB:** Replace the second example at the end of Tax 11.56(7)(c) with the following:

**2)** Company B purchases finished artwork from an advertising agency. The artwork and paper are provided to a printer who will print flyers that are not catalogs for Company B. The flyers are provided without charge to customers in Wisconsin. The charge by the advertising agency to Company B is subject to Wisconsin sales and use tax. The exemption under s. 77.

54 (2), Stats., does not apply because the printer is not selling tangible personal property or an item, or property under s. 77.52 (1) (b) or (c), Stats., and the exemption under s. 77.54 (43), Stats., does not apply because the flyers are used in Wisconsin.

**SECTION 165.** Tax 11.56(8) is created to read:

Tax 11.56(8) PURCHASES OF FUEL AND ELECTRICITY FOR USE IN MANUFACTURING PRINTED MATTER. Section 77.54 (30) (a) 6., Stats., provides an exemption for fuel and electricity consumed in manufacturing tangible personal property, or items or property under s. 77.52 (1) (b) or (c), Stats., in this state. "Manufacturing" is defined in s. 77.51 (7h), Stats.

**Note to LRB:** Replace the notes at the end of Tax 11.56(8) with the following:

**Note:** Section Tax 11.56 interprets ss. 77.51 (7h), (8), (11), and (14) (h), 77.52 (1) and (2) (a) 11., and 77.54 (2), (2m), (6) (a) and (b), (25), (25m), (30) (a) 6., and (43), Stats.

**Note:** The interpretations in s. Tax 11.56 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of typeset material shall first be considered sales of tangible personal property on April 1, 1983; (b) The exemption in sub. (3) (b) 2. for ingredients of publications became effective July 2, 1983, pursuant to 1983 Wis. Act 27; (c) The definition of storage and use for purposes of imposing use tax does not include storing or using raw materials becoming printed materials to be shipped outside Wisconsin effective October 1, 1993, pursuant to 1993 Wis. Act 16; (d) The sales and use tax exemption for raw materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (e) The exemption for fuel and electricity consumed in manufacturing became effective January 1, 2006, pursuant to 2003 Wis. Act 99; (f) The exemption for catalogs and the envelopes in which they are mailed became effective April 1, 2009 pursuant to 2007 Wis. Act 20; (g) The requirement that property and items which qualify for exemption under s. 77.54 (2) and (2m), Stats., be consumed exclusively and directly by a manufacturer in manufacturing property and items destined for sale became effective August 1, 2009 pursuant to 2009 Wis. Act 28; and (h) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

**SECTION 166.** Tax 11.57(title), (1)(intro.), (a), (h), and (i), and (2)(intro.), (a), and (i) are amended to read:

Tax 11.57(title) **Public utilities Utilities.**

(1)(intro.) ~~The gross receipts from the sale~~ Sales of the following tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and services provided by utilities are taxable:

(a) Utility services billed to household, industrial, or commercial customers, with any adjustments for discounts taken by customers in the utility's next reporting period.

(h) Sales of scrap, gravel, or timber sold for removal.

(i) Sales of tools, used equipment, and other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., to employees or other purchasers.

(2)(intro.) ~~Gross receipts from the~~ The following charges ~~sales~~ to customers are not subject to the tax:

(a) Connection or reconnection charges for natural gas, electricity, and water.

(i) Sales of ~~gas or other fuel, not including~~ and electricity, to farmers for use in farming, including agriculture, dairy farming, floriculture, silviculture, and horticulture.

**SECTION 167.** Tax 11.57(2)(im) is created to read:

Tax 11.57(2)(im) Sales of fuel and electricity consumed in manufacturing tangible personal property, or items or property under s. 77.52 (1) (b) or (c), Stats., in Wisconsin.

**SECTION 168.** Tax 11.57(2)(L) is repealed and recreated to read:

Tax 11.57(2)(L) Coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel, sold for residential use.

**SECTION 169.** Tax 11.57(2)(m) to (q) are created to read:

Tax 11.57(2)(m) Biomass, as defined in s. 196.378 (1) (ar), Stats., that is used for fuel sold for residential use.

(n) Electricity and natural gas sold during the months of November, December, January, February, March, and April for residential use. For purposes of this exemption, s. 77.54 (30) (b), Stats., provides that 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. In any event, a qualifying customer shall receive only 6 months of service exempt from taxation during the November through April period.

(o) Low-income assistance fees that are charged under s. 16.957 (4) (a) or (5) (a), Stats.

(p) If fuel or electricity is sold to a person partly for an exempt use and partly for a use that is not exempt, no tax shall be collected by the seller on the portion of the sales price of the fuel or electricity that is used for an exempt purpose, as specified on an exemption certificate provided by the purchaser to the seller, as described in par. (q).

(q) 1. Where a building, that contains residential quarters and commercial operations, is heated by one central heating plant, it is necessary to determine the portion of the fuel purchased which qualifies for the "residential use" exemption. The percentage of residential use may be computed by dividing the number of square feet used for residential purposes, excluding common areas, by the total area heated, excluding common areas. If this does not produce a reasonable result, any other reasonable method of estimating may be used. The resulting percentage should be rounded to the nearest 10%.

2. In this subsection, "residential use" means use in a structure or portion of a structure that is a person's permanent principal residence. Use in a residence includes heating or cooling the premises, heating water, operating fans or other motors, providing lighting, and other ordinary uses by the purchaser in a residence. Residential use includes use in single-family homes, duplexes, townhouses, condominiums, mobile homes, rooming houses, apartment houses, nursing homes, and farm houses, if the structure is used as a person's permanent

principal residence. Residential use includes use in apartment houses, nursing homes, and farm houses even though they are on a commercial or rural meter.

3. "Non-residential use" is use other than "residential use" as defined in subd. 2., and includes any use in the conduct of a trade, business or profession, whether the trade, business or profession is carried on by the owner of the premises or some other person. It includes use in secondary residences, motor homes not used as a permanent principal residence, travel trailers, other recreational vehicles, and transient accommodations. "Transient accommodations" include hotels, motels, inns, travel homes, tourist houses, summer cottages, apartment hotels, or resort lodges or cabins, and any accommodation which is rented for a continuous period of less than one month.

**Examples: 1)** A person owns a home in Wisconsin where he resides for 7 months each year and a cottage, also in Wisconsin, where he resides for 5 months each year. The home is his principal residence and the cottage is his secondary residence.

**2)** A person is a resident of Florida and has a home in Florida. The person also retains a home in Wisconsin. The person's Florida home is her principal residence and her Wisconsin home is her secondary residence.

4. A "continuous" certification designation is provided on the exemption certificate, form S-211, and, if claimed, the form remains in effect until replaced or revoked. A new certificate shall be filed if there is a change in the percentage of exempt use.

**SECTION 170.** Tax 11.57(3)(a) and (b)(intro.), 1., and 2. and (4)(intro.) are amended to read:

Tax 11.57(3)(a) Persons engaged in the business of providing electrical or gas public utility service are consumers of the tangible personal property ~~or, items, property, and goods~~ under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services used ~~to provide in providing the utility services.~~ The tax applies to the sales of the property, items, goods, or services to them, except where a specific exemption applies, such as the exemptions shown in sub. (4).

(b)(intro.) ~~Examples of gross receipts from the sale~~ The purchase, license, lease, or rental of the following property, items, goods, and services by a public utility which are subject to the tax are:

1. Transformers, substation equipment, and other tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., purchased by a utility and used to construct, improve, or repair a transmission or distribution line.

2. A contractor's charges for the construction, improvement, or repair of an overhead utility transmission or distribution line installed under easement or license on land owned by others.

(4)(intro.) The following ~~sales to public~~ purchases, licenses, leases, or rentals by utilities are not subject to the tax:

**SECTION 171.** Tax 11.57(4)(c) is repealed and recreated to read:

Tax 11.57(4)(c) Any residue used as a fuel in a business activity 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 wood residue.

**SECTION 172.** Tax 11.57(4)(d) and (5) are amended to read:

Tax 11.57(4)(d) Charges for X-ray testing of welding joints in the pipe as part of the construction of underground utility pipelines.

(5) WASTE TREATMENT FACILITIES. The ~~gross receipts~~ 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), Stats., which becomes a component part of an industrial waste treatment facility that is exempt or that would be exempt under s. 70.11 (21) ~~(am)~~, Stats., if the property or items were taxable under ch. 70, Stats., is exempt from sales and use tax.

**SECTION 173.** Tax 11.57(6) is created to read:

Tax 11.57(6) TRANSFER OF TRANSMISSION FACILITIES. Excluded from the definition of "sale," for sales and use tax purposes, is the transfer of transmission facilities, as defined in s. 196.485 (1) (h), Stats., to a transmission company, as defined in s. 196.485 (1) (ge), Stats., after the organizational start-up date, as defined in s. 196.485 (1) (dv), Stats., of such company in exchange for securities, as defined in s. 196.485 (1) (fe), Stats.

**Note to LRB:** Replace the notes at the end of Tax 11.57(6) with the following:

**Note:** Section Tax 11.57 interprets s. 77.54 (3), (6) (a) and (c), (14g) (fm), (17), (26m), and (30), Stats.

**Note:** The interpretations in s. Tax 11.57 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for sales of coal, fuel oil, propane, steam and wood became effective July 1, 1979, pursuant to Chapter 1, Laws of 1979; (b) The six-month exemption for electricity and gas became effective November 1, 1979, pursuant to Chapter 1, Laws of 1979; (c) The exemption for fuel converted to electrical energy, gas or steam by utilities became effective October 1, 1981, pursuant to Chapter 20, Laws of 1981; (d) The exemption for peat and fuel cubes produced from solid waste became effective April 2, 1986, pursuant to 1985 Wis. Act 149; (e) The exemption for wood residue became effective September 1, 1987, pursuant to 1987 Wis. Act 27; (f) The exemption for component parts of an industrial waste treatment facility became effective July 1, 1989, pursuant to 1983 Wis. Act 426, later clarified effective May 17, 1988, pursuant to 1987 Wis. Act 399; (g) The sale of gas or other fuel used to heat farm buildings, including greenhouses, that are not exempt machinery under s. Tax 11.12 became taxable July 1, 1991; (h) All fuel used in farming became exempt October 1, 1991, pursuant to 1991 Wis. Act 39; (i) The exemption for electricity sold for use in farming became effective May 1, 2000, pursuant to 1999 Wis. Act 9; (j) The exclusion from the definition of sale for certain sales of transmission facilities became effective October 29, 1999, pursuant to 1999 Wis. Act 9; (k) The exemption for fuel and electricity consumed in manufacturing became exempt January 1, 2006, pursuant to 2003 Wis. Act 99; (L) The exemption for certain low-income assistance fees became effective July 1, 2007, pursuant to 2005 Wis. Act 141; (m) The exemption for biomass sold for residential use became effective December 1, 2007, pursuant to 2007 Wis. Act 20; and (n) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

**SECTION 174.** Tax 11.61(1)(a)(intro.) is amended to read:

Tax 11.61(1)(a)(intro.) Charges made by veterinarians which shall be exempt from the sales tax include charges for the following ~~professional services for animals~~:

**SECTION 175.** Tax 11.61(1)(a)3. is created to read:

Tax 11.61(1)(a)3. Drugs.

**SECTION 176.** Tax 11.61(1)(c)(intro.) and 3. and (2)(a) and (b)1. are amended to read:

Tax 11.61(1)(c)(intro.) Sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats. by veterinarians which shall be taxable include the following:

3. Pet food, other than medicated pet food.

(2)(a) Sales to veterinarians of ~~medicines~~ drugs for ~~pets~~ animals and sales to veterinarians of other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats. to be used or furnished by them in the performance of their professional services to animals shall be subject to the sales or use tax, except as provided in par. (b) 1.

(b)1. Veterinarians' purchases of ~~medicines~~ drugs used on farm livestock, not including workstock, are exempt from tax.

**Notes to LRB:** 1. Amend the example at the end of Tax 11.61(2)(c) as follows:

**Example:** A veterinarian purchases ~~medicines~~ drugs for pets from an out-of-state supplier not registered to collect Wisconsin sales or use tax. The veterinarian is subject to Wisconsin use tax on the purchase price of the ~~medicines~~ drugs.

2. Replace the notes at the end of Tax 11.61(2)(c) with the following:

**Note:** Section Tax 11.61 interprets ss. 77.51 (3p) and (13) (m) and (o), 77.52 (2) (a) 10., and 77.54 (42), Stats.

**Note:** The interpretations in s. Tax 11.61 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Chapter 333, Laws of 1973, effective June 24, 1974, provided that a veterinarian is the consumer of all the animal medicines purchased. Prior to June 24, 1974, those purchases were exempt purchases for resale if sold independent of the performance of veterinarian services; (b) The exemption for medicines used on farm livestock, but not workstock, became effective July 1, 1986, pursuant to 1985 Wis. Act 29; (c) The exemption for animal identification tags purchased from the Wisconsin department of agriculture, trade and consumer protection became effective October 1, 1993, pursuant to 1993 Wis. Act 16; (d) The definition of "drug" is effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (e) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

**SECTION 177.** Tax 11.62(2)(a) and (b) and (3)(a) to (d) are amended to read:

~~Tax 11.62(2)(a) Over the counter sales by a barber or beauty shop operator of Sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), or (d), Stats., including packaged cosmetics, hair tonics, lotions, shampoo, wigs, falls, and toupees, and other merchandise and their charges for servicing wigs, hair pieces, or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., are subject to sales tax unless par. (b) applies. A Except as provided in par. (b), a barber or beauty shop operator who engages in sales subject to sales tax under this subsection shall register as a retailer and is responsible for collecting and remitting to the department the tax on taxable sales or charges.~~

(b) ~~A barber or beauty shop operator operator's sales are not subject to Wisconsin sales tax if the barber or beauty shop operator does not hold and is not required to hold a Wisconsin seller's permit. A barber or beauty shop operator is not required to hold a seller's permit and register as a retailer and to collect Wisconsin sales tax if the gross receipts barber or beauty shop operator's total taxable receipts from sales of tangible personal property or, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services are less than \$1,000 or less within a during the calendar year.~~

(3)(a) ~~Persons A barber or beauty shop operator's purchases of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services, which when resold are exempt as occasional sellers sales under sub. (2) (b) shall pay sales or use tax on all are taxable purchases of property used in the business, including items that may be resold to customers, items, goods, and services.~~

(b) ~~Persons who register and collect sales tax under sub. (2) (a) may purchase tangible personal property, such as hair pieces, for resale without paying tax by issuing their supplier a properly completed resale exemption certificate, claiming resale.~~

(c) ~~Tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., purchased by a barber or beauty shop operator and used in providing services is are subject to sales or use tax.~~

(d) ~~If a barber or beauty shop operator gives a resale an exemption certificate claiming resale for tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., to a supplier and then uses or consumes the property, item, or good in providing services, the barber or beauty shop operator is liable for use tax at the time the property, item or good is first used in a taxable manner.~~

**Note to LRB:** Insert a second note at the end of Tax 11.62(3)(d) as follows:

**Note:** The interpretations in s. Tax 11.62 are effective under the general sales and use tax law on and after September 1, 1969 except that the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

**SECTION 178.** Tax 11.63(1)(intro.) and (b), (2)(a), (b), and (c)2., (3), (4), and (5) are amended to read:

Tax 11.63(1)(intro.) ~~Gross receipts from the sale~~ Sales of the following services are not subject to the sales and use tax:

(b) Advertising space.



(2)(a) ~~Gross receipts from charges imposed~~ Charges by a radio or television station for art work, slides, films, tapes, or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), and (d), Stats., which the station prepares or produces for its advertisers or sponsors are subject to the sales and use tax. The ~~gross receipts charges~~ are taxable even though a station may retain possession of the tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., because "sale" is defined to include the transfer of not only title to and possession of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., but also the transfer of enjoyment of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats. If an advertiser maintains any control over the tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., prepared or produced, such as the right to determine when the property, item, or good will be used for advertising purposes, the advertiser is deemed to have received the enjoyment of the property, item, or good.

(b) ~~Gross receipts~~ Sales from a radio or television auction are subject to the sales and use tax.

**Note to LRB:** Amend the example at the end of Tax 11.63(2)(b) as follows:

**Example:** A radio station has a program where the announcer places items of merchandise of local retailers or sponsors up for bid to the station's listeners. The successful bidder, chosen by the radio station, delivers the purchase price of the merchandise to the radio station and receives a purchase certificate that allows him to redeem the merchandise from the retailer or sponsor. The purchase money is retained by the radio station, although the retailer is compensated by the station for its participation in the form of radio advertising. The radio station is subject to sales tax on the gross receipts from the program.

(c)2. The merchandise orders are sent directly to the station which accounts for the gross receipts.

(3) NONTAXABLE PURCHASES. ~~Gross receipts from the~~ The sale, license, lease, or rental of motion picture films or tape, and motion pictures or radio or television programs for listening, viewing, or broadcast, and the advertising materials related to the motion picture films or tape, and motion pictures or radio or television programs, to a motion picture theater or radio or television station are exempt from the sales and use tax under s. 77.54 (23m), Stats. Sales of blank or raw video or audio tapes to television or radio stations are included in this exemption.

(4) TAXABLE PURCHASES. Radio and television stations are consumers of equipment, materials, and supplies used to conduct their businesses and shall pay sales or use tax on purchases of this tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., except as provided in sub. (3).

(5) BROADCASTING TOWERS. Commercial broadcasting towers constituting the transmission antenna system of a radio or television station are deemed, for sales and use tax purposes, either real estate improvements if installed on land owned by the station or tangible personal property if installed on land owned by others. Contractors engaged in construction of broadcasting towers that are real estate improvements are the consumers of building materials used by them in constructing, altering, or repairing those towers and shall pay tax on the cost of the materials. Contractors engaged in construction of broadcasting towers that are tangible personal property may purchase materials used by them in constructing, altering, or repairing those towers without tax for resale. The charge by the contractor to the purchaser is subject to tax.

**Note to LRB:** Insert a second note at the end of Tax 11.63(5) as follows:

**Note:** The interpretations in s. Tax 11.63 are effective under the general sales and use tax law on and after September 1, 1969, except that the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

**SECTION 179.** Tax 11.64(2) and (3) are amended to read:

Tax 11.64(2) **MUSIC PLAYED AT CENTRAL STUDIO.** The gross receipts from the furnishing of background music to business, industry, and others from a central studio over telephone circuits or by FM radio are not subject to the sales or use tax as a digital audio work. The persons who provide such service are the consumers of the tapes, tape players, transmitters, and other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., used to provide the service, and their purchases of these items, as well as telephone telecommunication services from the telephone company, are taxable. However in addition, the gross receipts from equipment leased or rented to the customer as part of providing this service are taxable, and an An exemption for resale may be claimed on the purchase of such leased or rented equipment, if the equipment is used exclusively for lease or rental and if the customer has the option of receiving the digital audio work from the retailer, without also being required to purchase, lease, or rent the equipment from that same retailer.

(3) **MUSIC PLAYED BY CUSTOMER.** ~~The gross receipts from the lease, rental, hire or license to use all tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., comprising a background music system are taxable when the system is located on a customer's (e.g., lessee's or licensee's) premises and is operated by the customer. Any charge for installing the system is taxable. The sale of the tapes, equipment, and other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., to the person providing the system (e.g., the lessor or licensor) is exempt as a sale for resale, since rental is the equivalent of a resale if the equipment is used exclusively for lease, license, or rental.~~

**Note to LRB:** Replace the notes at the end of Tax 11.64(3) with the following:

**Note:** Section Tax 11.64 interprets ss. 77.51 (3pa), (14) (intro) and (j), and (17x) and 77.52 (1) (d), Stats.

**Note:** The interpretations in s. Tax 11.64 are effective under the general sales and use tax law on and after September 1, 1969, except that the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

**SECTION 180.** Tax 11.65(1)(a), (b), and (d) to (g) and (2)(a), (b), (e), and (g) are amended to read:

Tax 11.65(1)(a) The sale of admissions to amusement, athletic, entertainment, or recreational events or places 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 facilities are taxable. This includes admissions to movies, ballets, musical and dance performances, ball games, campgrounds, circuses,

carnivals, plays, hockey games, ice shows, fairs, snowmobile and automobile races, and pleasure tours or cruises.

(b) The sales tax applies to the gross receipts of organizations which have as an objective the supplying of amusement, athletic, entertainment, or recreational facilities to their members such as country clubs, golf clubs, athletic clubs, swimming clubs, yachting clubs, tennis clubs, and flying clubs. Taxable sales include the sale, furnishing or use of recreational facilities on a periodic basis and other recreational rights, including but not limited to membership rights, vacation services, and club memberships ~~sold in connection with the sale of time share properties described in s. 707.02 (32), Stats.~~ The proceeds received from initiation fees, special assessments, dues, and stock sales of clubs supplying amusement, athletic, entertainment, or recreational facilities to members are charges for the privilege of obtaining access to the clubs and are taxable receipts of the clubs.

(d) The charge for the privilege of fishing in fish ponds is taxable, even if the charge is based in whole or in part on the pounds or size of fish caught. The charge for the privilege of hunting in shooting preserves, pheasant farms, and fenced area bird and animal farms is also taxable, even if the charge is based in whole or in part on the number of game birds or animals taken.

(e) A person who provides boat, tackle, bait, and guide service provides a combination of recreational items which are subject to the tax, but guide service alone is not taxable.

(f) The sales tax applies to the gross receipts from conducting bingo games.

(g) The receipts from the sale or furnishing of access to campgrounds, other than Wisconsin state park campgrounds, are taxable, whether the fees are collected on a daily, weekly, annual, or other basis.

(2)(a) The dues of civic, fraternal, religious, patriotic, and lodge type organizations which are not organized for the purpose of furnishing amusement, athletic, entertainment, or recreational facilities to their members.

(b) Admissions to museums of history, art, or science, and to auto or trade shows, if professional entertainment is not provided at the show. Also, all admission fees to any museum operated by a nonprofit corporation under a lease agreement with the state historical society, such as the circus world museum.

(e) The ~~gross receipts~~ sales price from the sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., tickets or admissions by any baseball team affiliated with the Wisconsin department of American legion baseball.

(g) Admissions to events conducted by nonprofit organizations when the event does not involve entertainment as provided in s. 77.54 (7m), Stats., the organization is not engaged in a trade or business as defined in s. 77.54 (7m), Stats., and the organization is not otherwise required to hold a seller's permit. Sales of admissions to events conducted by a nonprofit organization that otherwise meets the requirements of s. 77.54 (7m), Stats., are not subject to tax, even if the nonprofit organization holds a seller's permit solely for the purpose of conducting bingo games.

**SECTION 181.** Tax 11.65(2)(h) to (k) are created to read:

Tax 11.65(2)(h) Admissions to places or events located outside Wisconsin.

(i) Sales of and admissions to time-share property as follows:

1. The furnishing of rooms or lodging to a person for a continuous period of less than one month through the sale of any kind of time-share property.

2. The sale, furnishing, or use of recreational facilities on a periodic basis and of other recreational rights, including membership rights, vacation services, and club memberships, with respect to time-share property, if the facilities are not available to persons who have not purchased the time-share property, other than guests.

(j) Sales 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.

(k) Sales 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.

**SECTION 182.** Tax 11.65(3), (4)(a) and (b), and (5) are amended to read:

Tax 11.65(3) PRIZE MONEY. Bowling alley center proprietors shall pay tax on all their regular bowling fees, including bowling tournament entrance fees. However, in the case of tournament entrance fees, the proprietor may subtract from its taxable gross receipts the amount advertised and set aside for prize money.

(4)(a) Persons conducting recreational events occasionally assert that the receipts are not taxable because they are donations and not charges for admission. To qualify as a donation, a payment shall be totally voluntary and no restriction whatsoever may be placed on the entrance of persons not making a donation. The facts surrounding the requests for the donation shall be obvious that admittance is not restricted to those making a donation. A set amount for the donation, such as through newspaper publicity or signs at the entrance, a turnstile, or restrictive device that shall be passed through, or an attendant requesting a donation at the door shall be presumptive evidence that the charge is not a donation but that the payment is required.

(b) When a charge to a patron bears little or no relationship to the actual value received, such as \$100 per ticket for a fund raising dinner dance, the tax may be based on the reasonable value of the tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services received.

(5) LOCATION OF EVENT. The receipts from sales of tickets of admissions to places of amusement or athletic events which take place in Wisconsin are taxable, even though some of the tickets may be sold out-of-state. For example, all sales of university of Wisconsin football tickets for games played in Wisconsin are taxable. However, if the university of Wisconsin, as agent, sells tickets for the university of Michigan for a game to be played in Michigan, the receipts are not subject to the Wisconsin sales tax.

**Note to LRB:** Replace the notes at the end of Tax 11.65(5) with the following:

**Note:** Section Tax 11.65 interprets ss. 77.52 (1) and (2) (a) 2. and 77.54 (7m), (10), and (35), Stats.

**Note:** The interpretations in s. Tax 11.65 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Bingo receipts became taxable December 30, 1973, pursuant to Chapter 156, Laws of 1973; (b) The exemption for admissions to museums operated under a lease with the State Historical Society became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (c) The exemption for admissions to American Legion baseball became effective September 1, 1985, pursuant to 1985 Wis. Act 29; (d) Recreational facilities and rights sold in connection with the sale of time-share property became taxable May 17, 1988, pursuant to 1987 Wis. Act 399; (e) The exemption for state park campground fees became effective September 1, 1989, pursuant to 1989 Wis. Act 31; (f) The exemption for admissions to certain gun clubs became effective July 1, 2007, pursuant to 2005 Wis. Act 327; (g) The exemption for sales of admissions by nonprofit organizations to certain youth sports activities became effective July 1, 2009, pursuant to 2009 Wis. Act 28; and (h) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

**SECTION 183.** Tax 11.66 is repealed and recreated to read:

**Tax 11.66 Telecommunications and telecommunications message services. (1)**  
DEFINITIONS. In this section:

(a) "Air-to-ground radio telephone service" means a radio service in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

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

(c) "Call-by-call basis" means any method of charging for telecommunications services by which the price of such services is measured by individual calls.

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

(e) "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.

(f) "Customer," for purposes of this section, means a person who enters into a contract with the seller of telecommunications services or, in any transaction for which the end user is not the person who entered into a contract with a seller of telecommunications services, the end user of the telecommunication 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.

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

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

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

(j) "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.

(k) "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.

(L) "Fixed wireless service" means a telecommunications service that provides radio communications between fixed points.

(m) "Home service provider" means a home service provider under sec. 124 (5) of P. L. 106-252, the Mobile Telecommunications Sourcing Act. Section 124 (5) of P.L. 106-252 provides that "home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(n) "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.

(o) "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 services; 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., Stats.

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

(q) "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.

(r) "Mobile telecommunications service" means a mobile telecommunications service under 4 USC 116 to 126, as amended by P.L. 106-252, the Mobile Telecommunications Sourcing Act. "Mobile telecommunications service" is defined in 4 USC 116 to 126, as amended by P.L. 106-252, to mean commercial mobile radio service, as defined in 47 CFR 20.3 as in effect on June 1, 1999. "Commercial mobile radio service" is defined in 47 CFR 20.3 to mean a mobile service that is either of the following:

1. A mobile service that is all of the following:

- a. Provided for profit, that is, with the intent of receiving compensation or monetary gain.

b. An interconnected service.

c. Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public.

2. The functional equivalent of a mobile service described in subd. 1.

(s) "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.

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

(u) "Place of primary use" means place of primary use as determined under 4 USC 116 to 126, as amended by P.L. 106-252. "Place of primary use" as determined under 4 USC 116 to 126, as amended by P.L. 106-252 means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be all of the following:

1. The residential street address or the primary business street address of the customer.
2. Within the licensed service area of the home service provider.

(v) "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.

(w) "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.

(x) "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 dollar units whereby the number of units declines with use in a known amount.

(y) "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.

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

(zb) "Radiotelegraph service" means transmitting messages from one place to another by means of radio.

(zf) "Radiotelephone service" means transmitting sound from one place to another by means of radio.

(zk) "Service address" as defined in s. 77.51 (17m), Stats., means any of the following:

1. 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.

2. If the location under subd. 1 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.

3. If the locations described under subds. 1. and 2. are not known by the seller who sells the telecommunications service, the customer's place of primary use.

(zp) "Telecommunications services" as defined in s. 77.51 (21n), Stats., 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:

1. 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.

2. Installing or maintaining wiring or equipment on a customer's premises.

3. Tangible personal property.

4. Advertising, including directory advertising.

5. Billing and collection services provided to 3<sup>rd</sup> parties.

6. Internet access services.

7. 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.



8. Ancillary services.

9. Digital products delivered electronically, including software, music, video, reading materials, or ringtones.

(zs) "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.

(zw) "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.

(zy) "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.

(2) TAXABLE SERVICES. Receipts that are subject to Wisconsin sales or use tax include receipts from the following services, if the services are sourced to Wisconsin as provided in sub. (3):

(a) Telecommunications services, including the following:

1. Intrastate telecommunications services.
2. Interstate telecommunications services.
3. International telecommunications services.
4. Private communication services.
5. 800 services, except interstate 800 services.
6. 900 services.
7. Fixed wireless services.
8. Mobile wireless services.
9. Prepaid calling services.
10. Stationary two-way radio services.
11. Paging services.
12. Facsimile, or FAX, transmission services.
13. Prepaid wireless calling services.
14. Value-added non-voice data services.
15. Residential communications services.
16. Coin-operated telephone services.

(b) Ancillary services, including the following:

1. Conference bridging services.

2. Directory assistance services.
3. Call forwarding services.
4. Voice mail services.
5. Caller ID services.
6. Call waiting services.
- (c) Internet access services.

(d) Telecommunications message 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 subs. (a), (ag), or (ar), or services that are incidental, as defined in s. 77.51 (5), Stats., to another service that is not taxable under subch. III of ch. 77, Stats., and sold to the purchaser of the incidental service. Telecommunications message services include the following:

1. Nonmechanical telephone answering services.

**Examples:** 1) A real estate business, whose employees spend considerable periods of time away from its office, contracts with Company A to answer incoming telephone calls during periods when employees are not available to answer the telephone. Employees of Company A receive the calls to the real estate office by telephone, take messages from incoming callers, and transmit the messages to the real estate company or particular employees in that company. The service provided by Company A is not incidental to another service sold by the company that is not a taxable service. Company A's charge for this service is subject to Wisconsin sales or use tax.

2) Company B employs an office management service that provides receptionist, typing, filing, scheduling, bookkeeping, and similar services. Employees of the office management service also answer and route incoming telephone calls. When calls cannot be routed, the office management service takes and transmits messages to the appropriate person. This answering service is only a small part of the total services provided.

The telephone answering service provided as a part of the office management service is not subject to Wisconsin sales or use tax because it is incidental to the office management service provided and that office management service is not taxable.

2. Security monitoring services that consist of recording a telecommunications message and notifying the customer or local authorities of the message.
3. Electronic mail services.
4. Mechanical or electronic voice messaging and telephone answering services, except ancillary services.

**Example:** Company A provides its customers access to an office message system computer through which a customer can deposit or retrieve telephone messages using a touch-tone telephone. The service may be used as a message center, a call forwarding service, or an answering service. Messages are stored in the computer, and the customer may send or retrieve messages, reply to a message directly, reroute messages to others, broadcast messages to a wider group, save selected messages, and cancel messages no longer needed. The service is available 24 hours a day, and the customer accesses the computer through either a toll-free telephone number or a local telephone number. The service provided by

Company A is not incidental to another service sold by the company that is not a taxable service and is not associated with or incidental to providing telecommunications services. Company A's charges for this service are subject to Wisconsin sales or use tax.

**(3) SOURCING.** This subsection describes the sourcing of telecommunications services, ancillary services, Internet access services, and telecommunications message services.

**(a) Telecommunications services.**

1. Except as provided in subds. 3. to 7., the sale of a telecommunications service that is sold on a call-by-call basis is sourced to the taxing jurisdiction:

a. where the call originates and terminates, if the call originates and terminates in the same taxing jurisdiction; or

b. where the call either originates or terminates and where the service address is located, if the call does not originate and terminate in the same taxing jurisdiction.

2. Except as provided in subds. 3. to 7., 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, as defined in sub. (1) (u) 2.

3. 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, as defined in sub. (1) (u) 2.

4. 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.

5. The sale of a prepaid calling service or a prepaid wireless calling service is sourced to the location determined under s. Tax 11.945 (2).

6. The sale of a prepaid wireless calling service is sourced to the location determined under s. Tax 11.945 (2), except that if the location cannot be determined under s. Tax 11.945 (2) (a) to (d), the prepaid wireless calling service occurs at the location determined under s. Tax 11.945 (2) (e) 3., or the location associated with the mobile telephone number, as determined by the seller.

7. a. 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.

b. 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.

**Example:** Company A contracts with Telecommunications Provider B for private communication service to send data from Company A's bank, located in Milwaukee, Wisconsin, to Company A's automated teller machines or "ATMs," located in Milwaukee, Wisconsin, and to send data from its ATMs in Milwaukee to its bank in Milwaukee. The charge by Telecommunications Provider B to Company A is based on a certain amount of dedicated channel capacity available to Company A on the communications channel, regardless of the volume of data transmitted or number of transmissions made by Company A. Since all of the customer channel termination points are located in Milwaukee, Wisconsin, the entire service is sourced to Milwaukee.

c. 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 in an equal percentage to both jurisdictions.

**Example:** Company B contracts with Telecommunications Provider C for private communication service to send data from Company B's bank, located in Milwaukee, Wisconsin, to Company B's automated teller machine (ATM) located in Waukesha, Wisconsin. Telecommunications Provider C charges Company B based on the location of the segments of the channel termination points. Since Company B has 2 customer channel termination points that are located in different taxing jurisdictions, one located in Milwaukee and the other located in Waukesha, the charge by Telecommunications Provider C to Company B is sourced equally between the Milwaukee taxing jurisdiction and the Waukesha taxing jurisdiction.

d. 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 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.

**Example:** Company JKL, headquartered in Milwaukee, Wisconsin, has branch offices in Madison, Wisconsin, Green Bay, Wisconsin, Chicago, Illinois and Minneapolis, Minnesota. Company JKL contracts with a telecommunications company for private communication service to send messages between and among its Milwaukee office and the branch offices. Company JKL has exclusive use of the channels while using them. The telecommunications company sells use of the communications channels to other parties while Company JKL is not using them. The charges by the telecommunications company to Company JKL are based on a certain amount of dedicated channel capacity available to Company JKL on the communications channels. The telecommunications company does not bill separately for the segments of the communications channels. Increasing capacity requires a higher charge. The telecommunications company refers to this service as "private line service." Of the charges by the telecommunications company to Company JKL for this service, 60% are subject to Wisconsin sales or use tax because 3 of the 5 customer channel termination points are located in Wisconsin.

e. No credit for tax paid to another state is allowed where the other state apportions the service in a manner similar to that provided in subd. 7. c. and d.

(b) *Ancillary services.* Except for detailed telecommunications billing services, ancillary services are sourced to the customer's place of primary use, as defined in sub. (1) (u) 2..

(c) *Internet access services.* Internet access services are sourced to the customer's place of primary use, as defined in sub. (1) (u) 2.

(d) *Exceptions.* For purposes of subs. (a), (b), and (c), 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 rule, the customer's service address, channel termination point, or place of primary use.

(e) *Telecommunications message services.* Telecommunications message services are sourced to the location determined under s. Tax 11.945 (2), which will generally result in the sale being sourced to the location where the customer, or someone at the direction of the customer, receives the message.

**(4) NONTAXABLE SERVICES.** The sales price from the sale of or charge for the following services are not taxable:

(a) Interstate or international telecommunications service if the service is sourced to a location outside Wisconsin.

(b) Revenues collected under s. 256.35 (3), Stats., the surcharge established by the public service commission under s. 256.35 (3m) (f), Stats., for customers of wireless providers as defined in s. 256.35 (3m) a. 6., Stats., and the police and fire protection fees under s. 196.025 (6), Stats.

(c) Transfers of telecommunications services to resellers who purchase, repackage and resell the services to customers. The reseller is liable for sales tax on its final retail sales of those services.

(d) Interstate 800 services.

(e) Transfers of services, commonly called "access services," to an interexchange carrier which permit the origination or termination of telephone messages between a customer in Wisconsin and one or more points in another telephone exchange, and which are resold by the interexchange carrier. The interexchange carrier is liable for sales tax on its final retail sales of those services.

(f) Detailed telecommunications billing services, as defined in sub. (1) (h).

**(5) CREDIT FOR TAX PAID TO ANOTHER STATE.** Any person who is subject to the tax under s. 77.52 (2) (a) 5., Stats., on telecommunications services that terminate in Wisconsin and who has paid a similar tax on the same services to another state may reduce the amount of the tax remitted to Wisconsin by an amount equal to the similar tax properly paid to another state on those services or by the amount due Wisconsin 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., Stats., was passed on an amount equal to the amounts not remitted.

**(6) PURCHASES BY PERSONS PROVIDING SERVICE.** Persons engaged in the business of providing telecommunications services are consumers, not retailers, of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., used by them or transferred incidentally by them in providing those services. The tax applies to the sale of the property, items, or goods to them.

**Note:** Section Tax 11.66 interprets ss. 77.51 (1ba), (1r), (3c), (3pe), (3pn), (3m), (5d), (5f), (5n), (5r), (7k), (8m), (9s), (10d), (10f), (10s), (13m), (17m), (21n), (24), (25), and (26), 77.52 (2) (a) 5. and 5m., 77.522 (4), and 77.525, Stats.

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

**Note:** The interpretations in s. Tax 11.66 are effective under the general sales and use tax law on or after September 1, 1969, except: (a) Chapter 39, Laws of 1975, effective July 31, 1975, expanded the telephone services subject to the tax to include "telephone services of whatever nature"; (b) Chapter 317, Laws of 1981, imposed the tax on interstate telegraph and

telephone service, effective May 1, 1982; (c) "911" service became exempt on August 1, 1987, pursuant to 1987 Wis. Act 27; (d) Telecommunications services originating in Wisconsin and charged to a subscriber in Wisconsin became taxable October 1, 1989, pursuant to 1989 Wis. Act 31; (e) Telecommunications services originating in Wisconsin and charged to a service address in Wisconsin became taxable October 1, 1991, pursuant to 1991 Wis. Act 31; (f) The repeal of the exemption for equipment in central offices of telephone companies became effective September 1, 1995, pursuant to 1995 Wis. Act 27; (g) Telecommunications services paid for by the insertion of coins in a coin-operated telephone became taxable August 1, 1996, pursuant to 1995 Wis. Act 351; (h) Certain telecommunications message services became taxable December 1, 1997, pursuant to 1997 Wis. Act 27; (i) Telecommunications services originating outside Wisconsin, terminating in Wisconsin and charged to a service address in Wisconsin, except certain services obtained by means of a toll-free number, became taxable December 1, 1997, pursuant to 1997 Wis. Act 27; (j) Credit for sales tax properly paid to another state on interstate telecommunications services became effective October 14, 1997, pursuant to 1997 Wis. Act 27; (k) Sales of rights to purchase telecommunications services became taxable August 1, 1998, pursuant to 1997 Wis. Act 237; (L) The exemption for interstate private line services no longer applies, effective December 1, 2002; (m) The definitions of air-to-ground radio telephone service, ancillary services, call-by-call basis, communications channel, conference bridging service, customer, customer channel termination point, detailed telecommunications billing services, directory assistance, eight hundred service, end user, fixed wireless service, home service provider, international telecommunications services, internet access services, interstate telecommunications services, intrastate telecommunications services, mobile telecommunications service, nine hundred service, paging service, place of primary use, postpaid calling service, prepaid calling service, prepaid wireless calling service, private communications service, radio service, radiotelegraph service, radiotelephone service, service address, telecommunications service, value-added nonvoice data service, vertical service, and voice mail service became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (n) The specific imposition of tax on ancillary services and interstate, intrastate, and international telecommunications services became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (o) The sourcing provisions related to telecommunications services became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (p) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

**SECTION 184.** Tax 11.67(1) and (2)(a) and (b) are amended to read:

Tax 11.67(1) GENERAL. When a transaction involves the transfer of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., along with the performance of a service, the true objective of the purchaser shall determine whether the transaction is a sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or the performance of a service with the transfer of the property, item, or good being merely incidental to the performance of the service. If the objective of the purchaser is to obtain the personal property, item, or good, a taxable sale of that property, item, or good is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved even though, as an incidence to the service, some tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., may be transferred.

**Note to LRB:** Amend the example at the end of Tax 11.67(1) as follows:

**Example:** A person performing business advisory, record keeping, payroll, and tax services for small businesses is providing a service even though this person may provide forms

and binders without charge as part of the service. The person is the consumer, not the seller, of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., furnished as an incidence to the service.

(2)(a) Since persons engaged in the business of furnishing services are consumers, not retailers, of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., which they use incidentally in rendering their services, tax applies to the sale of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats. to them.

(b) A person who performs a nontaxable service in conjunction with the sale of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats. is a retailer with respect to the sale, and the tax applies to the total ~~gross receipts~~ sales price from the sale without any deduction for the work, labor, skill, time spent, or other expense of producing the property, item, or good.

**SECTION 185.** Tax 11.67(2)(c) is renumbered 11.67(2)(c)1. and amended as renumbered to read:

Tax 11.67(2)(c)1. If there is a single charge for providing both taxable and nontaxable services that are not a bundled transaction as defined in s. 77.51 (1f), Stats., the entire charge is subject to the tax, unless it is determined by the department that another method, such as allocation or primary purpose of the transaction, more accurately reflects the tax. If the charges for taxable and nontaxable services are separately stated on an invoice, the tax applies only to the charge properly attributable to the taxable services, unless it is determined by the department that the primary purpose of the transaction method for computing the tax more accurately reflects the tax.

**SECTION 186.** Tax 11.67(2)(c)2. is created to read:

Tax 11.67(2)(c)2. If there is a single charge for providing both taxable and nontaxable services in a transaction that is a bundled transaction as defined in s. 77.51 (1f), Stats., the entire charge is subject to the tax, except as provided in s. 77.52 (20) (b), Stats.

**SECTION 187.** Tax 11.67(3)(a), (b), (d)1. and 2., (e)1. and 2., (f), (h), (i), (k), and (L) are amended to read:

Tax 11.67(3)(a) *Hospitals and clinics.* Hospitals and medical clinics generally provide nontaxable professional services. They are, therefore, the consumers of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., used in rendering the services. Hospitals and clinics which, in addition to rendering professional services, also sell tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services are retailers which and shall obtain a seller's permit and report the tax on these sales.

**Note to LRB:** Amend the examples at the end of Tax 11.67(3)(a) as follows:

**Examples: 1)** Sales of ~~non-prescription medicine~~ drugs by a hospital or clinic pharmacy are taxable if they are not dispensed under a prescription.

**2)** Sales of parking for motor vehicles by a hospital or clinic are taxable.

(b) *Original manuscripts or musical arrangements.* The transfer to a publisher of an original manuscript or musical arrangement for publication is not a sale of tangible personal property or a digital good under s. 77.52 (1) (d), Stats., and is not subject to the tax. However, the sale of copies of an author's or composer's work is a sale of tangible personal property or a digital good under s. 77.52 (1) (d), Stats., and is taxable. The sale of ~~manuscripts~~ a manuscript is taxable if the manuscript itself is of particular value as an item of tangible personal property or as a digital good under s. 77.52 (1) (d), Stats., and the purchaser is buying the property or good, and not the service which went into it.

(d)1. An interior decorator's fee is taxable when the decorator's services are part of a sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats. If a decorator bills a client only for the full list price of the property, item, or good sold and then receives the equivalent of a fee through the decorator's supplier in the form of a trade discount, the decorator shall pay a tax on the full amount billed the client without any deduction for services performed.

**Note to LRB:** Amend the example at the end of Tax 11.67(3)(d)1. as follows:

**Example:** A decorator's fee is taxable when it is added to the bill for tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., on a cost-plus arrangement.

2. A decorator's fee is not taxable if the fee is solely for services rendered and there is no sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., involved with the transaction.

**Note to LRB:** Amend the example at the end of Tax 11.67(3)(d)2. as follows:

**Example:** Designing a decorative scheme, advising clients or recommending colors, paints, wallpaper, fabrics, brands, or sources of supply are nontaxable services.

(e)1. The development of information pursuant to a research and development contract is a sale of a service which is not subject to the sales tax. Although the person performing the research and development may be under contract to provide plans, designs, and specifications, or to test and evaluate a proposed product, the primary objective of the customer is to obtain the results of the technical skill and the experimental and research work of the engineers and other technicians of the researcher.

2. In certain instances under a research and development contract, the information cannot be developed without the production of a prototype. In this situation, if the primary objective of the customer in the transaction is to obtain tangible personal property or an item under s. 77.52 (1) (b), Stats., such as a prototype, the researcher may purchase the material used to construct the prototype without tax as property for resale. The subsequent sale of the prototype by the researcher to the customer is subject to tax unless an exemption applies. If the primary objective of the customer is to obtain the information resulting from production of the prototype, the prototype is considered transferred to the customer incidental to the research and development services. The researcher is subject to tax on the material purchased and used to construct the prototype. Determinations shall be made on a case-by-case basis.

(f) *Recording studios.* When a recording studio agrees to furnish or supply records, acetates, compact discs, or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., which becomes the property, item, or good of others, the tax applies to the total gross receipts sales price resulting from the sale of the tangible personal



property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats. Gross receipts The sales price may not be reduced for labor or service costs, including charges for the use or rental of studio facilities, even though those costs may be itemized in billing the customer.

(h) *Drafting.* Charges made by a self-employed person for commercial drafting are subject to the tax when the charge is for detailed drawings based entirely on specifications and data supplied by architects, engineers, or other business firms. These charges are taxable if the concepts, ideas, specifications, or designs depicted in the drawings produced are the customer's and the person performing the drafting simply transfers the details supplied by the customer to paper thereby producing a drawing, which is tangible personal property, for use by the customer. It would also be taxable if it is transferred electronically to the purchaser since it is an additional digital good. When the person performing drafting services uses his or her own concepts and ideas in producing detailed drawings for a customer, the sale of the drawings is not a sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.

(i) *Enuresis alarms.* Charges for rental of bed-wetting alarm systems are taxable charges for the use of tangible personal property, not charges for ~~personal services~~ a service, whether or not the lessor analyzes information about the user and completes a report based on the information.

(k) *Taxidermists.* ~~Gross receipts~~ The sales price from services taxidermists perform on tangible personal property are is subject to the tax.

(L) *Car washes.* ~~The gross receipts of sales price received by persons providing car wash service services,~~ including those providing coin-operated self-service car washes consisting of a pressurized spray of soap and water, are taxable. These persons are the consumers of the tangible personal property such as soap, brushes, and towels they purchase, except for the wax, air freshener, and protectants physically transferred to a customer's vehicle. Thus, suppliers may accept ~~a resale~~ an exemption certificate claiming resale for the wax, air freshener, and protectants, and other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., sold to car wash operators, ~~but suppliers are liable for the tax on all other sales of supplies to these operators which will be physically transferred to the car wash operator's customers.~~ Car wash operators are liable for sales or use tax on their purchases of supplies that they use in providing their services unless those items are physically transferred to their customers.

**Note to LRB:** 1. Amend the example at the end of Tax 11.67(3)(m) as follows:

**Example:** Company B located in Wisconsin solicits advertising for telephone books yellow pages and compiles, publishes, and delivers the directories to the subscribers of telephone companies. Company B contracts with an out-of-state corporation to print the directories. The printer delivers a portion of the directories to the U.S. Postal Service for delivery directly to telephone subscribers in Wisconsin. The remaining directories are delivered to Company B who in turn distributes them to subscribers in Wisconsin. Company B is ~~not~~ subject to use tax on the directories delivered by the U.S. Postal Service as well as on the directories which it distributes to subscribers. ~~However, Company B is subject to use tax on the directories delivered to it which it distributes to subscribers.~~

2. Replace the notes at the end of Tax 11.67(3)(m) with the following:

**Note:** Section Tax 11.67 interprets ss. 77.51 (1f), (12), (12m), (13), (14) (intro.) and (h), (15a), (15b), (20), and (22) (a) and (b) and 77.52 (1), (2) (a), (2m) (a) and (b), and (20), Stats.

**Note:** The interpretations in s. Tax 11.67 are effective under the general sales and use tax law on and after September 1, 1969, except that (a) The fees paid to architects performing landscaping planning became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; (b) The definition of bundled transactions became effective October 1, 2009, pursuant to 2009 Wis. Act 2, and (c) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

**SECTION 188.** Tax 11.68(1), (2)(a), (b)1. to 4., and (c), (3)(a) and (b), (4)(a), (b)1., and (c) to (f), (5)(b), and (6)(intro.) and (b) are amended to read:

Tax 11.68(1) DEFINITION. In this section, "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), Stats., that is are applied or adapted to the use or purpose to which real property is devoted is are affixed to that real property, if the intent of the person who affixes that property, item, or good is to make a permanent accession to the real property. "Real property construction activities" do not include affixing property subject to tax under s. 77.52 (1) (c), Stats., to real property or affixing to real property tangible personal property that remains tangible personal property after it is affixed.

(2)(a) Construction contractors may be retailers with respect to some activities and consumers with respect to others. When a construction contractor acts as a retailer, the contractor shall obtain a seller's permit and pay the tax on gross receipts its receipts from retail sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., or and taxable services. When the contractor acts as a consumer, the contractor shall pay the tax on its purchases of property, items, and goods consumed.

(b)1. Property, items, and goods it installs which ~~retains its~~ retain their character as personal property after sale and installation.

2. Labor or services furnished in installing tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., which retains its retain their character as personal property after installation.

3. Labor and material furnished in the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of items of real property which retain their character as tangible personal property for repair purposes.

4. Tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., sold.

(c) Contractors are consumers of tangible personal property and items and goods under s. 77.52 (1) (b) and (d), Stats., they use when engaged in real property construction activities, such as altering, repairing, or improving real property.

(3)(a) Generally, real property construction contractors are persons who perform real property construction activities and include persons engaged in activities such as building,

electrical work, plumbing, heating, painting, steel work, ventilating, paper hanging, sheet metal work, bridge or road construction, well drilling, excavating, wrecking, house moving, landscaping, roofing, carpentry, masonry and cement work, plastering, and tile and terrazzo work.

(b) A retailer may also be a real property contractor, such as a department store which sells and installs tangible personal property and items or goods under s. 77.52 (1) (b) or (d), Stats., which becomes a part of real property after installation.

(4)(a) Under s. 77.51 (2), Stats., contractors who perform real property construction activities are the consumers of building materials which they use in altering, repairing, or improving real property. Therefore, suppliers' sales of building materials to contractors who incorporate the materials into real property in performing construction activities are subject to the tax. This includes raw materials purchased outside Wisconsin that are used by a contractor in manufacturing tangible personal property or items under s. 77.52 (1) (b), Stats., outside Wisconsin, or that are fabricated or altered outside Wisconsin by a contractor so as to become different or distinct items of tangible personal property or items under s. 77.52 (1) (b), Stats., from the constituent raw materials, and are subsequently stored, used, or consumed in Wisconsin by that contractor.

**Note to LRB:** Amend the note at the end of Tax 11.68(4)(a) as follows:

**Note:** Prior to August 12, 1993, raw materials purchased outside Wisconsin that were used by a contractor in manufacturing tangible personal property outside Wisconsin or that were fabricated or altered outside Wisconsin by a contractor so as to become different or distinct items of tangible personal property from the constituent raw materials, and were subsequently stored, used, or consumed in Wisconsin by that contractor were not subject to tax pursuant to the Circuit Court of Dane County decision in *Morton Buildings, Inc. vs. Wisconsin Department of Revenue* (2/10/92).

(b)1. Property Tangible personal property and property, items, and goods under s. 77.52 (1) (b), (c), and (d), Stats., which a construction contractor will resell as personal property may be purchased without tax for resale. This property includes personal property furnished as part of a real property construction activity when the personal property retains its character as personal property after installation. This property also includes personal property furnished as part of a real property construction activity when provided as part of a taxable landscaping service.

(c) Machinery and equipment, including road building equipment, tunnel shields, construction machines, and cement mixers, tools, including power saws and hand tools, and supplies, including machine lubricating and fuel oils, form lumber, and industrial gases, purchased by a construction contractor for the contractor's use are generally either consumed in the process of construction or are removed when the project is completed. The contractor is the consumer of the personal property and shall pay the tax on its purchases of the property. However, an exemption is provided in s. 77.54 (5) (d), Stats., for mobile cement mixers used for mixing and processing and the motor vehicle or trailer on which a mobile mixing unit is mounted, including accessories, attachments, parts, supplies, and materials for the vehicles, trailers, and units.

(d) Under s. 77.54 (26), Stats., contractors may purchase without sales or use tax tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., which becomes become a component part of an industrial waste treatment facility that would be exempt under s. 70.11 (21) (am), Stats., if the property were taxable under ch. 70, Stats., or a

municipal waste treatment facility, even though they are the consumers of the property and items.

(e) Under s. 77.54 (26m), Stats., contractors may purchase without sales or use tax waste reduction and recycling machinery and equipment, including parts, which are exclusively and directly used for waste reduction and recycling activities which reduce the amount of solid waste generated, reuse, recycle, or compost solid waste, or recover energy from solid waste, even though they are the consumers of the property.

(f) Under s. 77.54 (41), Stats., contractors, subcontractors, or builders may purchase without sales or use tax building materials, supplies, and equipment acquired solely for or used solely in the construction, renovation, or development of property that would be exempt under s. 70.11 (36), Stats. Section 70.11 (36), Stats., exempts property consisting of or contained in a sports and entertainment home stadium, including but not limited to parking lots, garages, restaurants, parks, concession facilities, transportation facilities, and functionally related or auxiliary facilities and structures; including those facilities and structures while they are being built; constructed by, leased to, or primarily used by a professional athletic team that is a member of a league that includes teams that have home stadiums in other states, and the land on which that stadium and those structures and facilities are located.

(5)(b) Certain types of property that have a variety of functions may be personal property in some instances and additions to real property in others, including boilers, furnaces, stand-by generators, pumps, substations, and transformers. When this property is installed primarily to provide service to a building or structure and is essential to the use of the building or structure, it is a real property improvement. However, when similar property is installed in a manufacturing plant to perform a processing function, it may, as machinery, retain its status as personal property.

(6)(intro.) A construction contractor is the consumer of tangible personal property and items and goods under s. 77.52 (1) (b) and (d), Stats., such as building materials, which is incorporated into or becomes a part of real property, and sales of this personal property to a contractor are subject to the tax. Personal property which becomes a part of real property includes the following:

(b) Built-in household items such as kitchen cabinets, dishwashers, fans, garbage disposals, central vacuum systems, and incinerators.

**SECTION 189.** Tax 11.68(6)(bm) is created to read:

Tax 11.68(6)(bm) Casework, tables, counters, cabinets, lockers, sinks, athletic and gymnasium equipment attached to the structure in apartment buildings, convalescent homes, or other residential buildings.

**SECTION 190.** Tax 11.68(6)(d) and (f) are amended to read:

Tax 11.68(6)(d) Buildings Personal property that is used to construct buildings, and structural and other improvements to buildings, including awnings, canopies, carpeting, foundations for machinery, floors, including computer room floors, partitions and movable walls attached in any way to realty, general wiring and lighting facilities, roofs, stairways, stair lifts, sprinkler systems, storm doors and windows, door controls, air curtains, loading platforms, central air conditioning units, building elevators, sanitation and plumbing systems, and heating, cooling, and ventilation systems.

(f) ~~Improvements~~ Personal property that is used to construct improvements to land, including retaining walls, roads, walks, bridges, fencing, railway switch tracks, ponds, dams, ditches, wells, underground irrigation systems except systems sold to and for use by farmers, drainage, storm, and sanitary sewers, and water supply lines for drinking water, sanitary purposes, and fire protection.

**SECTION 191.** Tax 11.68(6)(g) is repealed

**SECTION 192.** Tax 11.68(6)(h) is renumbered 11.68(6)(g) and amended as renumbered to read:

Tax 11.69(6)(g) Residential water heaters, water softeners, intercoms, incinerators, and garage door opening equipment, except portable equipment.

**SECTION 193.** Tax 11.68(6)(i) to (n) are renumbered 11.68(6)(h) to (m)

**SECTION 194.** Tax 11.68(7)(a)(intro.), 1. to 9., and 15. and (b), (8)(title), (intro.), (a), and (b), (9)(title), (a), and (b), (10)(title) and (a) to (c), and (11)(a) and (b) are amended to read:

Tax 11.68(7)(a)(intro.) Contractors shall obtain a seller's permit and report for taxation gross receipts the sales price received from the sale and installation of tangible personal property and items and goods under s. 77.52 (1) (b) and (d), Stats., furnished under a construction contract, which retains its character as personal property after installation, such as:

1. Furniture, radio and television sets and antennas, washers and dryers, portable lamps, home freezers, portable appliances, and window air conditioning units.
2. Communication equipment, including intercoms, pneumatic tube systems, satellite dishes, roof mounted antennas, CATV wiring, and music and sound equipment in business, industrial, or commercial buildings, schools, and hospitals, but not in apartment buildings, convalescent homes, or other residential buildings.
3. Casework, tables, counters, cabinets, lockers, sinks, athletic and gymnasium equipment, and related easily movable property attached to the structure in schools, laboratories, and hospitals, but not in apartment buildings, convalescent homes or other residential buildings except if attached to the structure in the bathrooms of such facilities.
4. Machinery, including safety attachments, equipment, tools, appliances, process piping and wiring used exclusively by manufacturers, industrial processors, and others performing a processing function with the items.
5. Office, bank, and savings and loan association furniture and equipment, including office machines, safe deposit boxes, drive-up and walk-up windows, night depository equipment, remote TV auto teller systems, camera security equipment except when used to monitor for unauthorized entry to a building or room in a building, and vault doors.
6. Personal property used to carry on a trade or business, including fixtures and equipment installed in stores, taverns, night clubs, restaurants, ice arenas, bowling centers, hotels and motels, barber and beauty shops, figure salons, theaters, and gasoline service stations. Underground storage tanks at gasoline service stations are real property.
7. Shades, curtains, drapes, venetian blinds, and associated hardware.

8. Radio, television, and cable television station equipment, but not broadcasting towers installed on their owner's land.

9. Except as provided in ss. 77.51 (4) ~~(b) 6.~~ (12m) (b) 7. and ~~(15) (b) 5.~~ (15b) (b) 7. and 77.54 (31), Stats., mobile homes, as defined in s. 101.91 (10), Stats., and manufactured homes, as defined in s. 101.91 (11) and (12), Stats., located in a mobile home park on land owned by a person other than the mobile home or manufactured home owner. Exemptions are provided by ~~ss. s. 77.51 (4) (b) 6. (12m) (b) 7. and (15) (b) 5. and 77.54 (31) (15b) (b) 7.,~~ Stats., for 35% of the total amount for which a new mobile manufactured home, as defined in s. 101.91 (11), Stats., is sold; ~~provided it is a primary housing unit, or it is transported in 2 unattached sections and the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation; and the full amount for which a used mobile home that is a primary housing unit is sold or purchased.~~ No credit may be allowed for trade-ins and the exemption does not apply to a lease or rental. The exemption provided in s. 77.54 (31), Stats., applies to the sale of, but not the lease or rental of, used mobile homes as defined in s. 101.91 (10), Stats., and used manufactured homes as defined in s. 101.91 (12), Stats.

15. Stop and go lights, railroad signs and signals, and street identification signs.

(b) If a few items of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services, minor in cost in relation to the total amount of a contract, are sold as part of a contract which includes construction of a building or other structure and no separate charge is made for the personal property, item, good, or taxable services service, the cost of the property, item, good, or taxable services service to the construction contractor shall be used as the measure of ~~gross receipts~~ subject to sales tax. If a separate charge is made for any of the property, items, goods, or services, they are subject to the tax.

**Note to LRB:** Amend the examples at the end of Tax 11.68(7)(b) as follows:

**Examples:** 1) A refrigerator and drapes are included in the contract to construct a new house. The cost of the refrigerator and drapes to the construction contractor is included in the construction contractor's measure of ~~gross receipts~~ subject to sales tax.

2) Landscaping services, minor in amount, are included in the contract to construct a new house. An amount equal to the charge by the landscaping subcontractor to the general contractor for landscaping services is included in the general contractor's measure of ~~gross receipts~~ subject to sales tax.

(8)(title) PROPERTY, ITEMS, AND GOODS PURCHASED BY A PERSON WHO PERFORMS BOTH REAL PROPERTY CONSTRUCTION CONTRACTING ACTIVITIES AND SELLS TANGIBLE PERSONAL PROPERTY OR ITEMS, PROPERTY, OR GOODS UNDER S. 77.52 (1) (B), (C), OR (D), STATS., AT RETAIL SELLING, WHEN DESTINATION OF PROPERTY, ITEM, OR GOOD PURCHASED IS UNKNOWN AT TIME OF PURCHASE.

(intro.) Section 77.51 (2), Stats., provides in part that "A 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), Stats., 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), Stats." However, some construction contractors who also sell construction supplies at retail do not know when they

purchase these supplies whether they will be consumed in construction contracts or resold to others. In these instances, a construction contractor may do one of the following at the time of making purchases:

(a) Give ~~a resale~~ an exemption certificate claiming resale to suppliers and purchase the property, item, or good without tax. If the contractor later resells the property, item, or good, the contractor shall report the sales and collect and remit the tax on the sales price to customers. If the property, item, or good is used in fulfillment of a construction contract, the contractor shall pay a use tax on its purchase price.

(b) Pay sales tax to suppliers on all property, items, and goods purchased. If the property, item, or good is later consumed in fulfilling a real property construction contract, the tax obligation is taken care of. If the property, item, or good is resold at retail, the contractor shall collect and remit sales tax on these retail sales, but may take as a credit against the sales tax any tax paid to suppliers at on the purchase of such property, item, or good.

(9)(title) PROPERTY, ITEMS, AND GOODS PURCHASED TO FULFILL A CONTRACT WITH AN EXEMPT ENTITY.

(a) The sales tax exemption provided to governmental units and other exempt entities, such as churches and nonprofit hospitals, does not apply to building materials purchased by a contractor for use under a construction contract to alter, repair, or improve real property for the exempt entity. ~~Gross receipts~~ The sales price received from sales of these building materials to a contractor are is subject to the tax if the building materials become part of real property after construction or installation.

**Note to LRB:** Amend the first example at the end of Tax 11.68(9)(a) as follows:

1) A contractor shall pay the tax to its supplier of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., purchased to construct a bridge, road, or governmental building, since the property, item, or good becomes a part of realty after installation.

(b) A contractor may purchase without tax for resale tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., which ~~retains its~~ retain their character as personal property after installation as described in sub. (7), and taxable services, even though the resale of the property, item, good, or taxable services service by the contractor is exempt when sold to a governmental unit or other exempt entity having a Wisconsin certificate of exempt status. This property includes furniture; processing machinery or equipment used in a municipal sewerage or water treatment plant; classroom laboratory sinks, tables, and other equipment; and seating for an auditorium. Taxable services include landscaping services. This exemption does not apply to property, items, goods, or taxable services which ~~becomes~~ become a part of real property as described in sub. (6) and par. (a).

(10)(title) USE OF PROPERTY, ITEMS, AND GOODS PURCHASED OUTSIDE WISCONSIN.

(a) If a construction contractor, when the contractor acts as a consumer, purchases property, items, or goods outside Wisconsin for use in Wisconsin, the contractor shall pay the Wisconsin use tax, but may claim a credit against this use tax for any sales or use tax legally due and paid in the state where the purchase was made.

(b) If a construction contractor purchases property, items, or goods outside Wisconsin which will be stored in Wisconsin and subsequently used in real property construction activities

outside Wisconsin, the contractor shall pay the Wisconsin use tax on those purchases, but may claim a credit against this use tax for any sales or use tax legally due and paid in the state where the purchase was made or where the property, item, or good was used prior to being stored in Wisconsin.

(c) If Wisconsin has jurisdiction over the out-of-state supplier, the supplier shall collect the use tax and remit it to the department. If the supplier fails to ~~do so~~ collect the tax, the contractor shall report and pay the tax to Wisconsin.

(11)(a) A contractor who performs real property construction activities may not add tax to any charge for labor or material, since ~~gross receipts~~ the sales price received from these activities are ~~is~~ not taxable. The tax which a contractor pays on its purchases of materials consumed in real property construction increases its cost of the materials and becomes a cost of doing business.

(b) A contractor's charges for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of all tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., are taxable. Solely for the purpose of imposing the tax on ~~this service~~ these services, numerous items that in other circumstances and for other purposes are deemed part of real property are deemed to retain their character as tangible personal property. Accordingly, any construction contractor who is engaged in the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of any items listed in par. (c) or other items of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., shall register as a retailer and pay the tax on ~~gross receipts~~ the sales price received from the performance of these services except that the tax does not apply to the original installation or complete replacement of an item listed in par. (c), if that installation or replacement is a real property construction activity under s. 77.51 (2), Stats.

**SECTION 195.** Tax 11.68(11)(c) is repealed and recreated to read:

Tax 11.68(11)(c) Section 77.52 (2) (ag), Stats., provides in part that 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 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), Stats., state institutions, as defined under s. 101.123 (1) (i), Stats., Type 1 juvenile correctional facilities, as defined in s. 938.02 (19), Stats., or similar facilities including 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.

**SECTION 196.** Tax 11.68(11)(d) is amended to read:

Tax 11.68(11)(d) Charges for tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., such as a repair part, incorporated into property listed in par. (c) being repaired are taxable. Because the item repaired is deemed personal property, any tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., incorporated into it is deemed may be purchased by the contractor without tax for resale and, therefore, may be purchased without tax.

**SECTION 197.** Tax 11.68(12) is repealed and recreated to read:

Tax 11.68(12) **REPAIR SERVICES CONTRASTED WITH REPLACEMENT SERVICES.** Section 77.52 (2) (a) 10., Stats., provides that the sales price received for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of all items of tangible personal property or items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., is taxable, except that the tax does not apply to the original installation or complete replacement of an item listed in s. 77.52 (2) (ag), Stats., if that installation or replacement is a real property construction activity under s. 77.51 (2), Stats. When a contractor performs an original

installation or complete replacement of an item listed in s. 77.52 (2) (ag), Stats., and that activity is a real property construction activity, the contractor's charges for the installation of the item is not subject to tax imposed under s. 77.52 (2) (a) 10., Stats., and the contractor must pay tax on its purchase of the materials used in making the real property improvement, as described in sub. (4) (a), unless an exemption applies.

**Example:** A contractor furnishes and installs a new furnace as part of a contract to build a new home for an individual. The installation of the furnace is a real property construction activity. The contractor is the consumer of the furnace, and is liable for tax on its purchase of the furnace. The tax imposed under s. 77.52 (2) (a) 10., Stats., does not apply to the contractor's charges for installing the furnace.

**SECTION 198.** Tax 11.68(13)(title), (a), (c), (d), and (e) are amended to read:

Tax 11.68(13)(title) COUNTY, AND STADIUM, AND REGIONAL TRANSIT AUTHORITY TAXES ON BUILDING MATERIALS.

(a) Section 77.71 (3), Stats., imposes excise taxes upon a contractor engaged in construction activities, which includes constructing, altering, repairing, or improving real property within a any county, or special district, or transit authority's jurisdictional area which that has adopted the county, or stadium, or transit authority sales and use tax. The taxes are measured by the sales purchase price of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., used in constructing, altering, repairing, or improving real property which becomes a component part of real property in that county, or special district, or transit authority's jurisdictional area, unless the contractor has paid the county, or stadium, or transit authority tax of a county, or special district, or transit authority in this state Wisconsin or a similar local sales tax in another state on the purchase of that property, item, or good.

(c) In providing repair the services to real property subject to taxation under s. 77.52 (2) (a) 10., Stats., a contractor may purchase without county, or stadium, or transit authority tax for resale the building materials used in providing the taxable services, and the county and stadium taxes imposed under s. 77.71 (3), Stats., do not apply to those purchases tangible personal property and items and goods under s. 77.52 (1) (b) and (d), Stats., physically or electronically transferred to the customer in conjunction with providing such services.

(d) Section 77.77 (3), Stats., provides that the sales tax under s. 77.71 (1), Stats., and the county, and stadium, and transit authority taxes under s. 77.71 (3), Stats., on the sale of building materials to contractors engaged in the business of constructing, altering, repairing, or improving real estate for others are not imposed, 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, or special district resolution, or transit authority resolution, 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.

(e) The county, and stadium, and transit authority taxes under s. 77.71 (3), Stats., on building materials used in real property construction activities are not imposed if the contractor purchased the building materials before the effective date of the county, or stadium, or transit authority tax of that county, or special district, or transit authority's jurisdictional area or has paid the sales tax of another county, or special district, or transit authority in this state Wisconsin in purchasing the building materials.

**Note to LRB:** Replace the notes at the end of Tax 11.68(13)(e) with the following:

**Note:** Section Tax 11.68 interprets ss. 77.51 (2), (12m) (b) 7., (14) (intro.), (15a) (a) 1. and 4., (15b) (b) 7., 77.52 (2) (a) 10., 11., and 20., 77.53 (1), 77.54 (5) (d), (6) (a), (26), (26m), (31), and (41), 77.71 (3), and 77.77 (3), Stats.

**Note:** The interpretations in s. Tax 11.68 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Vault doors were not considered personal property until August 1, 1975; (b) Service station equipment such as underground tanks, gasoline pumps and hoists installed in or securely attached to their owner's land was real property, but the property was personal property if the personal property and land were owned by different persons prior to August 1, 1975; (c) Advertising signs were real property if erected on and securely attached to the owner's land prior to August 1, 1975; (d) Landscaping services became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; (e) The exemption for waste reduction and recycling machinery and equipment became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (f) The exemption for mobile units used for mixing and processing became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (g) The credit for local sales taxes paid to other states became effective April 1, 1986, pursuant to 1987 Wis. Act 27; (h) The exemption for safety attachments for manufacturing machines became effective June 1, 1986, pursuant to 1985 Wis. Act 149; (i) The exemption of 35% of the selling price of new mobile homes and 100% of the selling price of used mobile homes became effective January 1, 1987, pursuant to 1985 Wis. Act 29; (j) The exemption for property used in constructing professional sports and home entertainment stadiums became effective October 1, 1991, pursuant to 1991 Wis. Act 37; (k) The 35% reduction in gross receipts for new mobile homes transported in 2 unattached sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (l) Tangible personal property purchased outside Wisconsin, stored in Wisconsin and subsequently used outside Wisconsin became taxable October 1, 1991, pursuant to 1991 Wis. Act 39; (m) Raw materials purchased outside Wisconsin, manufactured, fabricated or otherwise altered by the contractor outside Wisconsin and used in real property construction by the contractor in Wisconsin became subject to use tax effective August 12, 1993, pursuant to 1993 Wis. Act 16; (n) In *Tom Kuehne Landscape Contractor, Inc. vs. Wisconsin Department of Revenue*, Wisconsin Court of Appeals, District IV, No. 86-1813, October 29, 1987 (CCH 202-919), highway signs, sign bridges, delineator posts and guardrails were found to remain tangible personal property after installation; (o) The stadium tax on building materials became effective January 1, 1996, pursuant to 1995 Wis. Act 56; (p) The change to the definition of "real property construction activities" to include only those activities that take place at a site where tangible personal property is affixed to real property became effective for sales of property pursuant to contracts entered into on or after December 1, 1997, pursuant to 1997 Wis. Act 27; (q) The clarification of the tax treatment of the original installation or complete replacement of certain deemed items became effective on October 1, 2001, pursuant to 2001 Wis. Act 16; (r) The changes in the use of the terms mobile homes and manufactured homes became effective January 1, 2008, pursuant to 2007 Wis. Act 11; and (s) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

**SECTION 199.** Tax 11.69(1), (2), (3)(intro.), (a), (f), and (g), (4)(a) to (c), and (5)(a) are amended to read:

Tax 11.69(1) **DEFINITION.** In this section, "financial institution" includes a bank, savings and loan association, savings bank, or credit union.

(2) EXEMPT SALES. Financial institutions are primarily engaged in providing nontaxable services. Those services include charges to customers for cashier's checks, money orders, traveler's checks, checking accounts, and the use of safe deposit boxes.

(3)(intro.) A financial institution, except for a federally chartered credit union, shall obtain a seller's permit and regularly file the required sales and use tax returns if it has taxable gross receipts sales. Taxable gross receipts sales by a financial institution include sales of the following:

(a) ~~Charges for providing~~ Providing parking space for motor vehicles.

(f) ~~Meals and beverages~~ Prepared foods, candy, dietary supplements, and soft drinks in the institution's cafeteria.

(g) Personalized imprinted checks, except where the check printer is the retailer of the checks to customers. A check printer is the retailer of checks where it sets the price for the checks, provides the order forms for the checks and invoices or bills the customer for the checks, even though the financial institution collects the order from the customer, charges the customer's account on behalf of the check printer, and remits the amount due from the account to the check printer.

(4)(a) A financial institution's purchases subject to sales or use tax include office furniture and equipment, such as desks, chairs, couches, writing tables, and office machines, safe deposit boxes, drive-up and walk-up windows, night depository equipment, vault doors, remote TV auto teller systems, and camera security equipment except camera security equipment used to monitor for unauthorized entry to a building or a room in a building.

(b) Any tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., purchased by a financial institution to be given away to a customer, whether or not based upon the amount of a deposit, is taxable at the time it is purchased. This property includes calendars, playing cards, plat books, maps, and any other property, items, or goods transferred to customers to promote business. Checking account and savings account forms provided to customers free of charge are also subject to the tax.

(c) Purchases of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that the financial institution will resell, rather than give away, may be purchased without tax by giving its supplier a properly completed resale exemption certificate claiming resale.

(5)(a) Sales to state chartered credit unions and to federal and state chartered banks, savings and loan associations, and savings banks are taxable, unless resold by the credit union, bank, savings and loan association, or savings bank.

**Notes to LRB:** 1. Replace the note at the end of Tax 11.69(5)(b) with the following:

**Note:** Section Tax 11.69 interprets ss. 77.51 (13) (a), (14) (intro.), (15a), and (20) and 77.52 (1) and (2) (a) 9., Stats.

2. Insert a second note at the end of Tax 11.69(5)(b) as follows:

**Note:** The interpretations in s. Tax 11.69 are effective under the general sales and use tax law on and after September 1, 1969, except that the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed

to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

**SECTION 200.** Tax 11.70(1)(a) and (b) are renumbered 11.70(1)(b) and (c) and amended as renumbered to read:

Tax 11.70(1)(b) "Finished art artwork" means the final art artwork used for actual reproduction by photomechanical or other processes, or for display purposes, but does not include web site or home page designs. Finished art artwork also includes drawings, paintings, designs, photographs, lettering, paste-ups, mechanicals, or assemblies, charts, graphs, and illustrative material materials, regardless of whether such items are not reproduced.

(c) "Preliminary art artwork" means art artwork prepared solely for presenting an idea to a client or prospective client. Preliminary art artwork includes roughs, visualizations, sketches, layouts, and comprehensives.

**SECTION 201.** Tax 11.70(1)(a) is created to read:

Tax 11.70(1)(a) "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.

**SECTION 202.** Tax 11.70(2)(a), (b), (c), and (e) and (3)(a), (d), and (g) are amended to read:

(2)(a) Charges for finished art artwork. Finished art artwork is tangible personal property, unless it is transferred electronically. Finished artwork that is transferred electronically is an additional digital good, as provided in s. 77.51 (1a), Stats.

(b) Charges for preliminary art artwork all or any part of which results in the production of finished art artwork or other tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., by the advertising agency. This preliminary art artwork is tangible personal property or an item or good under s. 77.52 (1) (b) or (d), Stats.

**Note to LRB:** Amend the examples at the end of Tax 11.70(2)(b) as follows:

**Examples: 1)** Company A contracts with an advertising agency to produce an advertising campaign for Company A's product. The advertising agency develops 10 ideas or suggestions, in the form of preliminary art artwork, for an advertising flyer. Company A selects one of the ideas, and it is developed into finished art artwork, which is used to produce flyers.

The charges by the advertising agency for the production of preliminary art artwork for all 10 ideas are subject to tax, provided an exemption does not apply to the sale of the finished art artwork, because one idea was selected and was used to produce finished art artwork.

**2)** Company B contracts with an advertising agency to produce a radio commercial. The agency produces a demonstration tape (demo) which contains several different jingles which could be used in the commercial. Company B selects one of the jingles, and the commercial is produced.

The charge by the agency for the demo is subject to tax. The demo is preliminary art artwork. Since finished art artwork was produced from the preliminary art artwork, the charge is subject to tax, unless an exemption applies to the sale of the finished art artwork.

(c) Sales of signs, circulars, business cards, stationary showcards, banners, posters, bulletins, direct mail advertising, ~~catalogs~~, brochures, commercials, tapes, or other items of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.

**Note to LRB:** Amend the first and second examples at the end of Tax 11.70(2)(c) as follows:

**Examples: 1)** Company C contracts with an advertising agency to have 10,000 advertising flyers produced. The advertising agency prepares preliminary ~~art~~ artwork. Company C decides on one theme and the finished ~~art~~ artwork is produced. The advertising agency has the flyers printed and delivered to Company C. Company C mails the flyers to its Wisconsin customers.

The entire charge to Company C by the advertising agency for the flyers, which includes preliminary ~~art~~ artwork, finished ~~art~~ artwork, and the flyers, is subject to tax.

2) Assume the same facts as Example 1, except that Company C mails 90% of the flyers to customers outside Wisconsin and 10% to customers in Wisconsin.

Ten percent of the total charge to Company C by the advertising agency for the flyers, including the preliminary ~~art~~ artwork, finished ~~art~~ artwork, and flyers, is subject to tax.

(e) Producing, fabricating, processing, printing, or imprinting tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., for clients for a consideration, even though the client may furnish the materials used in producing, fabricating, processing, printing, or imprinting of the tangible personal property, items, or goods. However, the tax does not apply to the printing or imprinting the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that results in printed material, catalogs, or envelopes that are exempt under s. 77.54 (25) or (25m), Stats.

(3)(a) Preliminary ~~art~~ artwork that does not result in the production of finished ~~art~~ artwork or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.

**Note to LRB:** Amend the example at the end of Tax 11.70(3)(a) as follows:

**Example:** Company E contracts with an advertising agency for an ongoing advertising campaign. The agency submits several suggestions, in the form of preliminary ~~art~~ artwork, for a spring advertising campaign. These ideas are rejected by Company E. The charge by the advertising agency for preliminary ~~art~~ artwork not chosen for further development is not subject to tax, because the preliminary ~~art~~ artwork was not developed into finished ~~art~~ artwork.

(d) Consultation, market research, and compiling statistical or other information.

(g) Printed material, other than catalogs and the envelopes in which the catalogs are mailed, which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which is purchased and stored for the purpose of subsequently transporting it outside Wisconsin by the client for use thereafter solely outside Wisconsin.

**Note to LRB:** Amend the example at the end of Tax 11.70(3)(g) as follows:

**Example:** Company F contracts with an advertising agency to have 10,000 advertising flyers produced. The advertising agency prepares preliminary ~~art~~ artwork. Company F decides on one theme and the finished ~~art~~ artwork is produced. The advertising agency has the flyers

printed and delivered to Company F. Company F mails the flyers to its customers located outside Wisconsin.

The entire charge to Company F by the advertising agency for the flyers, which includes preliminary ~~art~~ artwork, finished ~~art~~ artwork, and the flyers, is exempt from tax because the printed advertising material is transported outside Wisconsin by Company F for use by Company F outside Wisconsin.

**SECTION 203.** Tax 11.70(3)(gm) is created to read:

Tax 11.70(3)(gm) Catalogs, as defined in s. 77.51 (1fr), Stats., and the envelopes in which the catalogs are mailed, if the catalogs are designed to advertise and promote the sale of merchandise or to advertise the services of individual business firms.

**Example:** Company A contracts with an advertising agency to have 5,000 catalogs that advertise Company A's products produced. The advertising agency has the catalogs printed. Some of the catalogs are delivered to Company A in Wisconsin and other catalogs are shipped directly to Company A's prospective customers in and outside Wisconsin.

The entire charge to Company A by the advertising agency for the catalogs, which includes any charges for preliminary artwork, finished artwork, and the catalogs, is exempt from tax because catalogs and the envelopes in which they are mailed are exempt from tax, regardless of whether the catalogs are delivered in or out of Wisconsin.

**SECTION 204.** Tax 11.70(3)(h) to (m), (4)(a) and (b), (5)(a)(intro.) and (b), (6), and (7)(a)2. and (b) are amended to read:

Tax 11.70(3)(h) Printing or imprinting tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., which will be subsequently transported outside Wisconsin for use outside Wisconsin by the client for advertising purposes.

**Note to LRB:** Amend the example at the end of Tax 11.70(3)(h) as follows:

**Example:** Company G contracts with an advertising agency to produce an advertising flyer. The advertising agency prepares preliminary ~~art~~ artwork. Company G decides on one theme, and the finished ~~art~~ artwork is prepared. Company G provides the finished ~~art~~ artwork, paper, and ink to a Wisconsin printer who prints 10,000 copies of the flyer. The flyers are mailed by Company G to addresses outside Wisconsin.

The charge to Company G by the printer for the printing of the flyers is exempt from tax because the flyers are transported outside Wisconsin for use outside Wisconsin by Company G for advertising purposes.

(i) Tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that will be resold by the client.

**Note to LRB:** Amend the example at the end of Tax 11.70(3)(i) as follows:

**Example:** Company H has an advertising agency produce specification sheets for Company H's products. The specification sheets are included with the products when sold to Company H's customers. The advertising agency produces the finished ~~art~~ artwork and has the printing done. Company H receives an itemized bill from the advertising agency which shows a charge for the finished ~~art~~ artwork and the printing.

The entire charge by the advertising agency to Company H is exempt from tax because the specification sheets are included with Company H's products which will be sold to customers.



Company H may claim a resale exemption for the specification sheets by providing the agency with a properly completed Wisconsin resale exemption certificate, form S-205 claiming resale.

(j) Tangible personal property and items under s. 77.52 (1) (b), Stats., 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), Stats., that is destined for sale and becoming an ingredient or component part of an the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale or which is consumed or destroyed or loses its identity in the manufacture manufacturing the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., in any form destined for sale.

**Note to LRB:** Amend the examples at the end of Tax 11.70(3)(j) as follows:

**Examples: 1)** Company I contracts with a Wisconsin advertising agency to produce an advertising flyer. The advertising agency prepares preliminary art artwork. Company I decides on one theme and the finished art artwork is prepared. Company I takes the finished art artwork to a Wisconsin printer and has 10,000 flyers printed. The printer uses its own paper and ink to print the flyers. The flyers are mailed by the printer to addresses in Wisconsin.

The charge to Company I by the advertising agency for the preliminary art artwork and finished art artwork is exempt from Wisconsin sales tax because the finished art artwork is consumed in the production of flyers which are sold by the printer to Company I.

**2)** Assume the same facts as Example 1, except that Company I provides the paper to the printer, in addition to the finished art artwork.

The charge to Company I by the Wisconsin advertising agency for the preliminary art artwork and finished art artwork is subject to Wisconsin sales tax. The printer is selling a printing service, and not tangible personal property or an item or property under s. 77.52 (1) (b) or (c), Stats., to Company I. The destined for sale requirement is not met and exemption from tax does not apply. Even though Company I is furnishing a printing service, however, it is still considered to be engaged in manufacturing, and its machinery and equipment, if used exclusively and directly in manufacturing, qualify for exemption under s. 77.54 (6) (a), Stats.

(k) 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. This exemption does not apply to advertising supplements that are not newspapers.

**Note to LRB:** Amend the example at the end of Tax 11.70(3)(k) as follows:

**Example:** Company J contracts with an advertising agency to produce a shoppers guide advertisement. The advertising agency produces layouts and roughs for approval by Company J. Company J approves, and the finished art artwork for the shoppers guide advertisement is produced. The preliminary art artwork and finished art artwork charges are billed to Company J for the job. Company J deals directly with the shoppers guide publisher to run the advertisement in a shoppers guide. The advertising agency bills Company J \$1,000 for preliminary art artwork and \$3,000 for finished art artwork.

The total \$4,000 charge is exempt from Wisconsin sales or use tax because the preliminary art artwork results in finished art artwork and the finished art artwork becomes an ingredient or component part of a shoppers guide, or is consumed or loses its identity in the manufacture of shoppers guides.

(L) 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), Stats., if the ~~items~~ containers, labels, sacks, cans, boxes, drums, bags, or other packaging and shipping materials are used by the purchaser to transfer merchandise to customers. Also exempt are 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 these items are used to transfer merchandise to customers.

**Note to LRB:** Amend the example at the end of Tax 11.70(3)(L) as follows:

**Example:** An advertising agency produces finished ~~art~~ artwork to be used on Company K's shipping boxes. The boxes are used by Company K to ship its products to its customers. The advertising agency delivers the finished ~~art~~ artwork to a printer who uses the finished ~~art~~ artwork to print and produce the boxes which the advertising agency resells to Company K.

The entire charge for the finished ~~art~~ artwork and boxes is exempt from Wisconsin sales or use tax because the boxes are used by Company K in packing, packaging, or shipping merchandise to customers. Company K should provide the agency with a properly completed exemption certificate of exemption, form S-207.

(m) Raw materials processed, fabricated, or manufactured into, attached to, or incorporated into printed materials that are transported and used solely outside Wisconsin.

**Note to LRB:** Amend the example at the end of Tax 11.70(3)(m) as follows:

**Example:** Company A, located in Wisconsin, publishes ~~catalogs~~ flyers it gives away to potential customers. Company A purchases paper from a company who delivers it to a Wisconsin printer that prints the ~~catalogs~~ flyers for Company A. The ~~catalogs~~ flyers are transported and used solely outside Wisconsin.

The paper purchased by Company A for the ~~catalogs~~ flyers is exempt from Wisconsin sales or use tax.

(4)(a) Tax applies to an advertising agency's total ~~gross receipts~~ sales price from the sale of tangible personal property, ~~items, property, and goods~~ under s. 77.52 (1) (b), (c), and (d), Stats., ~~or and~~ taxable services without any deduction for any cost element which becomes a part of the sales price. These elements include consultation, research, copy, supervision, model fees, rentals, photostats, typesetting, postage, express, telephone, travel, agency service fees, or any other labor or service cost incurred in the production of that property. No deduction may be taken even though the costs are separately itemized in a billing to the client.

(b) Tax applies to in-progress billings for production work which ultimately results in the production of finished ~~art work~~ artwork or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.

(5)(a)(intro.) The tax applies to an agency's ~~gross receipts~~ sales price from the ~~a~~ sale of or the storage, use, or consumption of tangible personal property ~~in or items, property, or goods~~ under s. 77.52 (1) (b), (c), or (d), Stats., sourced to Wisconsin under s. 77.522, Stats., regardless of whether:

**Note to LRB:** Amend the example at the end of Tax 11.70(5)(a)2. as follows:

**Example:** An agency's billing to a client in Minnesota for finished art artwork transferred to a business in Wisconsin is taxable.

(b) The sale of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., or and taxable services occurs when the advertising agency transfers possession of the tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., to the client or the client realizes the economic benefits of the property's, item's, or good's use, even though the property, item, or good may not be physically transferred to the client.

(6) FEES ADDED TO BILLINGS. When an amount billed as an agency "fee," "retainer," "service charge," or "commission" represents services rendered which are a part of the sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., the amount is taxable. If it clearly represents a charge or a part of a charge for any nontaxable service rather than for the sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., it is not taxable. A fee representing both taxable and nontaxable sales shall be reasonably allocated between taxable and nontaxable sales, unless the fee is a bundled transaction, as defined in s. 77.51 (1f), Stats.

**Note to LRB:** Amend the example at the end of Tax 11.70(7)(a)1. as follows:

**Example:** Company L is an advertising agency. Company L purchases various art equipment such as paint brushes, easels, etc., that it uses in its operations. A portion of the art equipment is sold to the general public for use. The art equipment Company L sells to the general public may be purchased by Company L without Wisconsin sales or use tax as property for resale, provided Company L gives its supplier a properly completed Wisconsin-resale exemption certificate, form S-205 claiming resale.

(7)(a)2. Becomes physically an ingredient or component part of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., the advertising agency produces and sells.

**Note to LRB:** Amend the example at the end of Tax 11.70(7)(a)2. as follows:

**Example:** Company M is an advertising agency that produces displays for customers. The displays are usually framed or matted photographs or prints. Company M may purchase the frames, matting, and paper for photographs and prints without Wisconsin sales or use tax as property for resale, provided it gives its supplier a properly completed Wisconsin-resale exemption certificate, form S-205 claiming resale.

(b) An advertising agency is the consumer of all tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., purchased by the agency, other than tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., purchased for immediate sale to customers or that are used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property or an item or property under s. 77.52 (1) (b) or (c), Stats., that is destined for sale and that becomes physically an ingredient or component part of the article of tangible personal property sold or the item or property under s. 77.52 (1) (b) or (c), Stats., that is destined for sale by the agency. As the consumer, the advertising agency is subject to Wisconsin sales or use tax on the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., purchased.

**Note to LRB:** Replace the notes at the end of Tax 11.70(7)(b) with the following:

**Note:** Exemption certificates and their instructions may be obtained free of charge, by writing to Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902, or by calling (608) 266-2776.

**Note:** Section Tax 11.70 interprets ss. 77.51 (1f), (1fr), (3rm), (14) (intro.) and (h), 77.52 (1) and (2), 77.522, 77.54 (2), (2m), (6) (b), (25), (25m), and (43), and 77.585 (8), Stats.

**Note:** The interpretations in s. Tax 11.70 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for printing or imprinting of tangible personal property furnished by customers and used out-of-state for advertising became effective March 1, 1970; (b) The exemption for printed advertising material used out-of-state became effective May 21, 1972; (c) The exemption for ingredients or components of shoppers guides, newspapers, and periodicals became effective July 7, 1983; (d) The sales and use tax exemption for raw materials for printed materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (e) The exemption for catalogs and their mailing envelopes became effective April 1, 2009, pursuant to 2007 Wis. Act 20; (f) The clarification that items must be consumed exclusively and directly by a manufacturer in manufacturing property or items destined for sale became effective August 1, 2009, pursuant to 2009 Wis. Act 28; (g) The definitions of bundled transaction and finished artwork became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (h) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

**SECTION 205.** Tax 11.71(1)(intro.) and (b) are amended to read:

Tax 11.71(1)(intro.) In -this section:

(b) "Automatic data processing equipment" includes computers used for data processing purposes and their peripheral equipment as well as punched card tabulating machines. It does not include tape-controlled automatic drilling, milling, or other manufacturing machinery or equipment.

**SECTION 206.** Tax 11.71(1)(c) is repealed

**SECTION 207.** Tax 11.71(1)(d) is renumbered 11.71(1)(c)

**SECTION 208.** Tax 11.71(1)(d) is created to read:

Tax 11.71(1)(d) "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.

**SECTION 209.** Tax 11.71(1)(e) is repealed and recreated to read:

Tax 11.71(1)(e) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

**SECTION 210.** Tax 11.71(1)(em) is created to read:

Tax 11.71(1)(em) "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.

**SECTION 211.** Tax 11.71(1)(f) is amended to read:

Tax 11.71(1)(f) "Data processing" means the recording and handling of information by means of mechanical or electronic equipment, commonly referred to as automatic data processing.

**SECTION 212.** Tax 11.71(1)(g) is repealed

**SECTION 213.** Tax 11.71(1)(h) and (i) are renumbered 11.71(1)(g) and (h) and amended as renumbered to read:

Tax 11.71(1)(g) "Input" means the information or data transferred, or to be transferred, from external storage media including punched cards, punched paper tape, and magnetic media into the internal storage of the computer.

(h) "Keypunching" means recording information in cards, paper tapes, or magnetic tapes, disc, or drum by punching holes or otherwise entering information in the cards, tapes, discs, or drums, or recording data on any media to represent letters, digits, and special characters. Keypunching includes the necessary preliminary encoding or marking of the source documents.

**SECTION 214.** Tax 11.71(1)(j) is renumbered 11.71(1)(i)

**SECTION 215.** Tax 11.71(1)(j) is created to read:

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

**SECTION 216.** Tax 11.71(1)(k) is repealed and recreated to read:

Tax 11.71(1)(k) "Prewritten computer software" is defined in s. 77.51 (10r), Stats., to mean computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of 2 or more "prewritten computer software" programs or prewritten portions of computer software does not cause the combination to be other than "prewritten computer software." "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser if it is sold to a person other than the specific purchaser. If a person modifies or enhances computer software of which the person is not the author or creator, the person is the author or creator only of the person's modifications or enhancements. "Prewritten computer software" or a prewritten portion of computer software that is modified or enhanced to any degree, with regard to a modification or enhancement that is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software," except that if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement is not "prewritten computer software."

**SECTION 217.** Tax 11.71(1)(n) is repealed