

# Digital Goods

## How Do Wisconsin Sales and Use Taxes Apply to Sales and Purchases of Digital Goods?

## Table of Contents

	Page
<b>I. INTRODUCTION.....</b>	<b>1</b>
A. General.....	1
B. Nature of Sales and Use Taxes.....	1
C. Who Must Obtain a Seller’s Permit.....	2
D. Who Must Obtain A Use Tax Registration Certificate.....	2
E. How to Obtain a Seller’s Permit or Use Tax Registration Certificate.....	3
F. Filing Tax Returns and Payment of Tax.....	4
<b>II. What are Digital Goods? .....</b>	<b>5</b>
“Transferred Electronically” .....	5
<b>III. Imposition of Sales and Use Taxes on Digital Goods .....</b>	<b>6</b>
A. Statutory Language - Sales Tax .....	6
B. Statutory Language - Use Tax.....	6
<b>IV. Effective Date of Imposition of Sales and Use Tax Regarding Digital Goods .....</b>	<b>6</b>
<b>V. When Does a Sale of a Digital Good Occur? .....</b>	<b>7</b>
<b>VI. Sourcing of Sales and Purchases of Digital Goods.....</b>	<b>7</b>
A. Statutory Language .....	7
B. Determination of Where the Sale of a Digital Good Takes Place.....	8
C. Determination of Where the Lease, Rental, or License of a Digital Good Takes Place .....	9
<b>VII. Digital Audio Works .....</b>	<b>10</b>
A. Statutory Language .....	10
B. What is a Digital Audio Work? .....	10
C. What is Not a Digital Audio Work?.....	10
<b>VIII. Digital Audiovisual Works .....</b>	<b>10</b>
A. Statutory Language .....	10
B. What is a Digital Audiovisual Work? .....	10
C. What is Not a Digital Audiovisual Work? .....	10
<b>IX. Digital Books.....</b>	<b>11</b>
A. Statutory Language .....	11
B. What is a Digital Book?.....	11
C. What is Not a Digital Book?.....	11
<b>X. Additional Digital Goods.....</b>	<b>12</b>
A. Statutory Language .....	12
B. What Are Additional Digital Goods?.....	13
<b>XI. Digital Codes.....</b>	<b>13</b>
A. Statutory Language .....	13

B. What is a Digital Code? .....	14
C. What is Not a Digital Code? .....	14
D. Sales and Use Tax Treatment of Digital Codes.....	14
<b>XII. Exemptions for Digital Goods.....</b>	<b>14</b>
A. Statutory Language .....	14
B. Scope of Exemption.....	14
C. Examples of the Exemptions That May Apply to Digital Goods .....	15
1. Federal Preemption. ....	15
2. “Consumed in Manufacturing” Exemption. ....	15
3. “Consumed in Manufacturing” Exemption – Newspapers, Shopper’s Guides, and Periodicals.....	15
4. Farming Exemptions.....	16
5. Sales by Elementary or Secondary Schools.....	16
6. Certain Transactions Relating To Aircraft, Motor Vehicles, and Truck Bodies. ....	17
7. Newspapers, Periodicals, Controlled Circulation Publications, and Shopper’s Guides.....	17
8. Volunteer Fire Departments – Fire Trucks and Fire Fighting Equipment. ....	18
9. Sales by American Legion Baseball Teams.....	18
<b>XIII. IF YOU HAVE QUESTIONS OR NEED ASSISTANCE.....</b>	<b>18</b>

## I. INTRODUCTION

### A. General

Effective October 1, 2009, Wisconsin's sales and use taxes apply to the sales of and the storage, use, or other consumption of "specified digital goods," "additional digital goods," and "digital codes" in Wisconsin, as provided by 2009 Wis. Act 2, and as amended by 2009 Wis. Act 28.

This publication provides information regarding Wisconsin sales and use taxes as they relate to sales and purchases of "specified digital goods," "additional digital goods," and "digital codes." It describes what these products are and what retailers and purchasers of such products must do to comply with the law.

As used in this publication, the term "digital goods" refers collectively to "specified digital goods," "additional digital goods," and "digital codes" as defined under Wisconsin's sales and use tax laws.

"Specified digital goods" are defined in sec. 77.51(17x), Wis. Stats., to mean "digital audio works," "digital audiovisual works," and "digital books." For Wisconsin sales and use tax purposes, a "digital code" is treated the same as the specified digital good to which the code relates.

"Additional digital goods" are defined in sec. 77.51(1a), Wis. Stats., to mean greeting cards, finished artwork, periodicals, video or electronic games, and newspapers or other news or information products that are transferred electronically. For Wisconsin sales and use tax purposes, a "digital code" is treated the same as the additional digital good to which the code relates.

More information on "digital audio works," "digital audiovisual works," "digital books," "digital codes," and "additional digital goods" is provided beginning on page 10.

Sales and purchases of digital goods which are subject to the 5% state sales or use tax may also be subject to the (1) 0.5% county sales or use tax, (2) 0.1% baseball stadium sales or use tax, (3) 0.5% football stadium sales on use tax, and (4) 0.5% premier resort area taxes. (Effective January 1,

2010, the premier resort area tax rate for the City of Wisconsin Dells and the Village of Lake Delton is increased to 1.0%.) Additional information about these taxes is contained in the following:

- (1) County tax: Publication 201, *Wisconsin State and County Sales and Use Tax Information*, Part XVIII.
- (2) Baseball stadium tax: Publication 201, *Wisconsin State and County Sales and Use Tax Information*, Part XVIII. Applies to sales and purchases made in Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties.
- (3) Football stadium tax: Publication 201, *Wisconsin State and County Sales and Use Tax Information*, Part XVIII. Applies to sales and purchases made in Brown County.
- (4) Premier resort area taxes: Publication 403, *Premier Resort Area Tax*. These taxes apply to certain retailers making taxable sales of tangible personal property, certain items, digital goods, and services. Publications 201 and 403 are available online at [www.revenue.wi.gov](http://www.revenue.wi.gov).

### CAUTION

- The information in this publication reflects the positions of the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature and in effect as of October 1, 2009. Laws enacted and in effect after that date, new administrative rules, and court decisions may change the interpretations in this publication.
- The examples and lists of taxable and nontaxable sales are not all-inclusive. They merely set forth common examples.

### B. Nature of Sales and Use Taxes

1. **Sales tax** is imposed on retailers who:
  - (a) sell, lease, license, or rent tangible personal property;
  - (b) sell, lease, license, or rent coins or stamps of the United States that are sold, leased, licensed, rented, or traded as collector items above their face value;

- (c) lease certain tangible personal property affixed to real property;
- (d) sell, lease, license, or rent digital goods; or
- (e) sell taxable services at retail;

if the transaction is sourced to a location in Wisconsin. The tax is based on the retailer's sales price from such transactions.

2. **Use tax** is imposed on the storage, use, or other consumption in Wisconsin of tangible personal property; coins or stamps of the United States that are sold or traded as collector items above their face value, certain leased tangible personal property affixed to real property, digital goods, and taxable services, if no Wisconsin sales tax was paid by the purchaser to the retailer of the tangible personal property, coin, stamp, certain leased property, digital good, or taxable service.

The use tax is based on the buyer's purchase price of the tangible personal property, coin, stamp, certain leased property, digital good, or taxable service.

### C. Who Must Obtain a Seller's Permit

Every individual, partnership, corporation, or other organization making sales, licenses, leases, or rentals at retail of any of the property, items, goods, or services listed in Part I.B.1. in Wisconsin is required to have a seller's permit, unless all sales licenses, leases, or rentals by the seller are exempt from sales or use tax.

### D. Who Must Obtain A Use Tax Registration Certificate

Although a retailer may have no location in Wisconsin from which sales, licenses, leases, or rentals of any of the property, items, goods, or services listed in Part I.B.1. are made, the retailer is engaged in business in Wisconsin, for purposes of the sales and use tax law, if one or more of the following conditions exist:

- The retailer owns any real property in Wisconsin.

- The retailer leases or rents out any tangible personal property or any item described in Part I.B.1.(b) or (c) located in Wisconsin.
- The retailer maintains, occupies or uses, permanently or temporarily, directly or indirectly, or through a subsidiary, agent, or other person, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business in Wisconsin. (See exception for foreign corporation publishers.)
- The retailer has any representative, agent, salesperson, canvasser, or solicitor operating in Wisconsin under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or taking orders for any tangible personal property, any item or good described in Part I.B.1.(b), (c), or (d), or taxable services.
- The retailer services, repairs, or installs, in Wisconsin, tangible personal property or any item described in Part I.B.1.(b), (c), or (d).
- The retailer delivers property, items, or goods described in Part I.B.1.(a), (b), (c), or (d) into Wisconsin in company operated vehicles.
- The retailer performs construction activities in Wisconsin.
- Any person who has an affiliate in this state, if the person is related to the affiliate and if the affiliate uses facilities or employees in this state to advertise, promote, or facilitate the establishment of or market for sales of items by the related person to purchasers in this state or for providing services to the related person's purchasers in this state, including accepting returns of purchases or resolving customer complaints. For purposes of this paragraph, 2 persons are related if any of the following apply:

1. One person, or each person, is a corporation and one person and any person related to that person in a manner that would require a stock attribution from the corporation to the person or from the person to the corporation under section 318 of the Internal Revenue Code owns directly, indirectly, beneficially, or constructively at least 50 percent of the corporation's outstanding stock value.
2. One person, or each person, is a partnership, estate, or trust and any partner or beneficiary; and the partnership, estate, or trust and its partners or beneficiaries; own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the profits, capital, stock, or value of the other person or both persons.
3. An individual stockholder and the members of the stockholder's family, as defined in section 318 of the Internal Revenue Code, owns directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of both persons' outstanding stock value.

An out-of-state retailer with no Wisconsin location from which sales are made, but who is engaged in business in Wisconsin based on any of the above conditions, must apply to the Department of Revenue for a use tax registration certificate.

The retailer must report Wisconsin use tax on sales in Wisconsin or sales that are for storage, use, or other consumption in Wisconsin.

Refer to sec. Tax 11.97, Wis. Adm. Code, "Engaged in business' in Wisconsin," for more information about use tax obligations of out-of-state retailers.

**Exception:** A publisher that is a foreign corporation (i.e., a corporation that is not organized under Wisconsin law) is not considered to be a retailer

engaged in business in Wisconsin, and is not required to collect Wisconsin use tax on its sales or delivery of property, items, goods, or services described in Part I.B.1., if its activities in Wisconsin do not exceed:

1. The storage of the publisher's raw materials for any length of time in Wisconsin in or on property owned by a person other than the publisher and the delivery of the publisher's raw materials to another person in Wisconsin if that storage and delivery are for printing by that other person.
2. The purchase from a printer of a printing service or of printed materials in Wisconsin for the publisher.
3. The storage of the printed materials for any length of time in Wisconsin in or on property owned by a person other than the publisher.
4. Maintaining, occupying, and using, directly or by means of another person, a place that is in Wisconsin, that is not owned by the publisher and that is used for the distribution of printed materials.

#### **E. How to Obtain a Seller's Permit or Use Tax Registration Certificate**

A retailer may apply for a seller's permit or use tax registration certificate using one of the following methods:

- Use the Department of Revenue's online registration system and submit an application electronically. Go to: [www.revenue.wi.gov](http://www.revenue.wi.gov). Under "Electronic Services," click the link for "Business Tax Online Registration."
- Complete Form BTR-101, *Application for Business Tax Registration*, and submit it to the Department of Revenue. Form BTR-101 may be obtained online at: [www.revenue.wi.gov/forms/sales/index.html](http://www.revenue.wi.gov/forms/sales/index.html).

## F. Filing Tax Returns and Payment of Tax

### 1. How Often Must a Return Be Filed?

If you have a seller's permit, use tax registration certificate, or consumer use tax registration certificate, you must file a return for each "reporting period," even if no tax is due for that period. Your "reporting period" will be either monthly, quarterly, or annually. For example, if your reporting period is monthly, you must file whether any tax is due for the month. Generally, your reporting period will be quarterly unless the Department of Revenue notifies you in writing that your returns must be filed monthly or annually. Wisconsin sales and use tax returns must be filed using one of the electronic filing methods listed in Part I.F.2. A seller that is unable to file electronically may request a waiver from the Department of Revenue. A waiver will be granted if the requirement to file electronically causes an *undue hardship*. An example of an undue hardship is the onset of a disabling illness or injury. Your request for a waiver must be **in writing**. The request should indicate the business name, tax account number, and the reason why your sales and use tax returns cannot be electronically filed. Requests can be:

- E-mailed to: [DORWaiverRequest@revenue.wi.gov](mailto:DORWaiverRequest@revenue.wi.gov);
- Faxed to: (608) 267-1030; or
- Mailed to: Wisconsin Department of Revenue, Mandate Waiver Request, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949.

Additional information is available at: [www.revenue.wi.gov/eserv/rule.html#sales](http://www.revenue.wi.gov/eserv/rule.html#sales); or you may contact the department by e-mail at: [sales10@revenue.wi.gov](mailto:sales10@revenue.wi.gov); or by telephone at (608) 261-6261.

If you have been granted a waiver, a return will be mailed to you shortly before the end of each reporting period. If you do not receive your return within 15 days after the end of the reporting period, phone the Department of Revenue at (608) 266-2776.

### 2. Electronic Filing and Payment Options Available for Sales and Use Tax Returns

#### a. *My Tax Account*

Beginning in February 2009, a new online service called "My Tax Account" became available to business taxpayers.

*My Tax Account* is a free Internet-based taxpayer service that allows you to file and pay your sales and use taxes electronically. It performs the necessary computations of tax based on information that you enter and allows you to make your tax payment via electronic funds transfer, credit card or paper check. *My Tax Account* allows you to view the filing and payment history of your account and identify any tax periods that need attention. You can also direct requests to the Department of Revenue to change your address, obtain an extension to file a return or inactivate your account.

To use *My Tax Account*, you will need to apply for and obtain a logon ID and password from the Department of Revenue. Please watch the Department of Revenue's web site at: [www.revenue.wi.gov](http://www.revenue.wi.gov) for more details on the transition to this new service, including information about how to obtain your logon ID and password.

NOTE: One of the Department of Revenue's previous electronic filing options, Sales Internet Process (SIP), was taken out of service in June of 2009.

#### b. *Sales TeleFile*

You can file your Wisconsin sales and use tax return with any touch-tone telephone. This program accepts four payment types: Direct withdrawal (only available during the call in which you file your return), credit card, check, or money order. To use TeleFile, obtain a Sales TeleFile worksheet and payment voucher from the Department of Revenue's web site at:

<https://ww2.revenue.wi.gov/TeleSIP/application>. When you have completed the worksheet, call (608) 261-5340 to actually file your return.

### c. eFile Transmission

This program is a service for taxpayers using approved private vendors' software or who have the technical expertise to create a file in XML format. eFile transmission places return data into a file format that can be directly processed into the Department of Revenue system. Using secure transmission over the Internet you can submit a payment at the same time that you file your return using ACH debit or ACH credit. You will receive an e-mail acknowledgement to confirm receipt of a successful file transmission. Information about file transmission can be found on the Department of Revenue's web site at: [www.revenue.wi.gov/eserv/eftgen.html](http://www.revenue.wi.gov/eserv/eftgen.html).

**IMPORTANT CHANGE:** Electronic Funds Transfer (EFT) Payment and Registration System will no longer be available for the tax programs covered by *My Tax Account* after December 31, 2009. No new registrations for the taxes covered by *My Tax Account* are being accepted by the EFT Registration and Payment System.

### d. Questions?

More information on all of the above services can be found under the "Business" or "E-Services" sections of the Department of Revenue web site [www.revenue.wi.gov](http://www.revenue.wi.gov). If you have questions about electronic filing or payments, contact the department by writing to Wisconsin Department of Revenue, Electronic Funds Transfer Assistance, Mail Stop 3-80, P.O. Box 8902, Madison, WI 53708-8902; calling (608) 266-2776; or e-mailing at [sales10@revenue.wi.gov](mailto:sales10@revenue.wi.gov).

## II. What are Digital Goods?

Digital goods include versions of products that have historically been produced and transferred as articles of tangible personal property, and that are now produced and transferred electronically as digital files. In many cases, a digital good is also available for transfer as an

article of tangible personal property. However, it is not necessary for a digital good to have a tangible counterpart to be considered a digital good.

*Example:* Recorded music has been produced and sold in the form of vinyl LPs, cassette tapes, and CDs. More recently, recorded music has been produced and sold as a digitally-encoded file which is transferred electronically to the purchaser. Recorded music transferred electronically is a digital good.

A digital good can be a transmission of sound, images, or any combination thereof, such as a live radio or television broadcast, regardless of whether the transmission is an analog signal or a digital signal.

A digital good can be previously recorded sounds or images such as music, movies, or video or electronic games that are transferred electronically to customers by retailers of such products.

It is not necessary for the purchaser of the digital good to record the digital good on tangible storage media for the product to be considered a digital good.

*Example 1:* A retailer sells a movie and "streams" the movie to the purchaser using the Internet. The purchaser watches the movie as it is being "streamed" without having the right to record the movie. The retailer is selling a digital good.

*Example 2:* A retailer sells a movie and uploads the movie to the purchaser using the Internet. The purchaser has the right to and does record the movie on a hard drive. The purchaser has the right to watch the movie as many times as he wishes by playing the recorded movie file. The retailer is selling a "digital good."

### "Transferred Electronically"

A digital good is characterized by the fact that it is transferred electronically to the purchaser. Section 77.51(21q), Wis. Stats., provides that:

" 'Transferred electronically' means accessed or obtained by the purchaser by means other than tangible storage media."

Typical means of transferring a digital good electronically to a purchaser include uploading the digital good using the Internet, streaming the digital good over the Internet, and e-mailing the digital good to the purchaser.

A digital good is transferred electronically regardless of whether the purchaser is allowed to make or retain a copy of the digital good.

**Caution:** “Transferred electronically” is a term that applies to digital goods. “Delivered electronically” is a term that applies to prewritten computer software. Prewritten computer software delivered electronically is tangible personal property and not a digital good for purposes of Wisconsin’s sales and use tax laws.

### **III. Imposition of Sales and Use Taxes on Digital Goods**

#### **A. Statutory Language - Sales Tax**

Section 77.52(1)(d), Wis. Stats., provides the following:

“A tax is imposed on all retailers at the rate of 5 percent of the sales price from the sale, lease, license, or rental of specified digital goods and additional digital goods at retail for the right to use the specified digital goods or additional digital goods on a permanent or less than permanent basis and regardless of whether the purchaser is required to make continued payments for such right.”

“Specified digital goods” is defined by sec. 77.51(17x), Wis. Stats.:

“Specified digital goods” means digital audio works, digital audiovisual works, and digital books. For purposes of this subchapter, the sale of or the storage, use, or other consumption of a digital code is treated the same as the sale of or the storage, use, or other consumption of any specified digital goods for which the digital code relates.”

For the statutory definition of “additional digital goods,” see Part X.

#### **B. Statutory Language - Use Tax**

Section 77.53(1), Wis. Stats., provides, in part, the following:

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

### **IV. Effective Date of Imposition of Sales and Use Tax Regarding Digital Goods**

Wisconsin sales and use taxes first apply to sales and purchases of digital goods occurring on or after October 1, 2009.

In general, a retailer making a sale of a digital good that occurs on or after October 1, 2009 that is sourced to Wisconsin as discussed in Part VI., is required to collect the appropriate Wisconsin sales or use tax. However, sec. 77.54(18), Wis. Stats. provides an exception, as follows:

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

measured by the purchase price, on the service or property purchased under the contract.”

## V. When Does a Sale of a Digital Good Occur?

Section 77.585(8)(b), Wis. Stats., provides the following:

- “1. Except as provided in subd. 2., a sale or purchase involving a digital good under s. 77.52 (1) (d) is completed at the time when possession is transferred by the seller or the seller’s agent to the purchaser or the purchaser’s agent or when the digital good is first used, whichever comes first.
2. A sale or purchase of a product transferred electronically, including a digital good under s. 77.52 (1) (d), that is sold by subscription, is completed at the time when the payment for the subscription is due to the seller. For purposes of this subdivision, ‘subscription’ means an agreement with a seller that grants the consumer the right to obtain products transferred electronically from within one or more product categories having the same tax treatment, in a fixed quantity or for a fixed period of time, or both.”

**Note:** The examples below illustrate the application of sec. 77.585(8)(b), Wis. Stats., to the sale of digital codes. Digital codes are discussed in Part XI.

**Example:** On September 28, 2009, Customer A placed an order for a digital good with Retailer B. The contract for sale is NOT in writing. Retailer B mailed the digital code, on a plastic card, to Customer A. Customer A received the digital code on September 30, 2009, at their mailbox located in Wisconsin. The sale of the digital code occurs on September 30, 2009, the date Retailer B’s agent (the U.S. Postal Service) transferred possession of the digital code to Customer B. Retailer A’s sale of the digital code to Customer B is not subject to tax because the sale of the digital code occurred prior to the effective date of the tax.

**Example:** Same facts as the previous example, except that the U.S. Postal Service delivers the digital code to Customer B on October 1, 2009. Retailer A’s sale of the digital code to Customer B is subject

to tax since the sale occurs on or after October 1, 2009, the effective date of the tax.

**Example:** Customer D places an order with Retailer X for a gift subscription for digital audio works on October 10, 2009. The subscription is in the name of a recipient provided by Customer D. Retailer A is to notify the recipient of the gift subscription during the week before Christmas Day 2009. The subscription agreement provides that Retailer A will bill Customer D for the subscription in January 2010. Retailer A’s sale of the subscription occurs in January 2010, when it bills Customer D for the subscription as provided by the terms of the subscription agreement.

## VI. Sourcing of Sales and Purchases of Digital Goods

### A. Statutory Language

Section 77.522(1)(a)1., Wis. Stats., provides the following:

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

Section 77.522(1)(b), Wis. Stats., provides the following:

“Except as provided in par. (c) and subs. (3), (4), and (5), the location of a sale is determined as follows:

1. If a purchaser receives the product at a seller’s business location, the sale is sourced to that business location.
2. If a purchaser does not receive the product at a seller’s business location, the sale is sourced to the location where the purchaser, or the purchaser’s designated donee, receives the product, including the

location indicated by the instructions known to the seller for delivery to the purchaser or the purchaser's designated donee.

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

- c. If a service is sold, the sale is sourced to the location from which the service was provided."

Section 77.522(3)(a), Wis. Stats., provides the following:

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

Section 77.522(3)(d), Wis. Stats., provides that:

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

## **B. Determination of Where the Sale of a Digital Good Takes Place**

The following hierarchy is used to source the **sale** (but not a **lease, rental, or license**) of a digital good, occurring October 1, 2009 or later, to a location:

1. If the purchaser takes possession or makes first use of the digital good at the seller's place of business, the sale is sourced to that location.

**Example:** Customer A purchases three songs at Retailer B's store. While at the store, Retailer B electronically transfers the songs to Customer A's

device. The sale is sourced to Retailer B's store location (sec. 77.522(1)(b)1., Wis. Stats.).

2. If 1. does not apply, the sale is sourced to the location where the purchaser, or the purchaser's designated donee, takes possession or makes first use of the digital good, including the location indicated by the instructions known to the seller for delivery to the purchaser or the purchaser's designated donee.

**Example:** Company A has several business locations in Wisconsin and Minnesota. Company A purchases a subscription from Retailer X. The subscription allows employees of Company A, using a computer, monitor, and Internet access, to go to Retailer X's web site, enter a user name and password, and select and view training videos covering a variety of topics for a period of one-year. The subscription is a sale of a digital audiovisual work. Company A provides Retailer X with written information indicating that Company A will make first use of the product at a location in Wisconsin. The sale is sourced to Wisconsin, as the location indicated by the instructions known to the seller for delivery to the purchaser or the purchaser's designated donee is a location in Wisconsin (sec. 77.522(1)(b)2., Wis. Stats.).

3. If 1. or 2. do not apply, the sale is sourced to the purchaser's address as indicated by the seller's business records, if the records are maintained in the ordinary course of the seller's business and if using that address to establish the location of a sale is not in bad faith.

**Example:** Customer A, a resident of Wisconsin, visits Retailer B's web site. Customer A purchases a movie, which Retailer B electronically transfers to Customer A's device. At the time of the transfer, Retailer B does not know where Customer A's device is located, but Retailer B does have Customer A's address that it maintains in its records in the ordinary course of its business. The sale is sourced to Customer A's address (sec. 77.522(1)(b)3., Wis. Stats.).

4. If 1., 2., or 3. do not apply, the sale is sourced to the purchaser's address as obtained during the consummation of the sale, including the address indicated on the purchaser's payment

instrument, if no other address is available and if using that address is not in bad faith.

**Example:** Customer A, a resident of Wisconsin, visits Retailer B's web site. Customer A purchases a movie using a credit card. Retailer B then electronically transfers the movie to Customer A's device. At the time of the sale, Retailer B does not know where Customer A will take possession or make first use of the movie. Retailer B does not have an address for Customer A in the records it maintains in the ordinary course of its business. Prior to completing the sale, Retailer B requires its customers to provide their name, address, an e-mail address, and phone number. Retailer A sources the sale to the address furnished by Customer A (sec. 77.522(1)(b)4., Wis. Stats.).

5. If the location of a sale of the digital good cannot be determined under 1., 2., 3., or 4., including the circumstance in which the seller has insufficient information to determine the location under 1., 2., 3., or 4., the sale is sourced to the location from which the digital good was first available for transmission by the seller, not including any location from which the digital good was merely transferred electronically.

### C. Determination of Where the Lease, Rental, or License of a Digital Good Takes Place

The following is used to source the lease, rental, or license of a digital good:

1. With regard to the first or only payment on the lease, rental, or license of the digital good, the lease, rental, or license is sourced to the location as determined under Part V.1.B.
2. If the digital good is moved from the place where the digital good was initially delivered, the subsequent periodic payments on the lease, rental, or license are sourced to the digital good's primary location as indicated by an address for the digital good that is provided by the lessee or licensee and that is available to the lessor or licensor in records that the lessor or licensor maintains in the ordinary course of the lessor's or licensor's business, if the use of such an address does not constitute bad faith. The lo-

cation of a lease, rental, or license as determined under this paragraph shall not be altered by any intermittent use of the digital good at different locations.

## VII. Digital Audio Works

### A. Statutory Language

Section 77.51(3pa), Wis. Stats. (2007-08), provides that:

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

### B. What is a Digital Audio Work?

Examples of digital audio works include:

- Recorded or live songs
- Recorded or live readings of books or other written materials
- Recorded or live speeches or lectures
- Ringtones (digitized sound files that are downloaded onto a device and that may be used to alert the customer regarding a communication, but not including ringback tones or other digital audio files that are not stored on the purchaser’s communication device).

### C. What is Not a Digital Audio Work?

- Works that contain visual elements in addition to sound (see “digital audiovisual works” in Part VIII.)
- Audio greeting cards sent by electronic mail (see note below)

- Recorded music, audio books, or recorded speeches or lectures that are transferred using a tangible medium such as tape or CD
- Ringback tones and other digital audio files which are not stored on the purchaser’s communication device.

*Note:* While audio greeting cards sent by electronic mail are not “digital audio works,” they are “additional digital goods.” See Part X. for additional information.

## VIII. Digital Audiovisual Works

### A. Statutory Language

Section 77.51(3p), Wis. Stats., provides that:

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

### B. What is a Digital Audiovisual Work?

Examples of digital audiovisual works include:

- Movies
- Motion pictures
- Musical videos
- News and entertainment programs
- Live or recorded events, such as professional football games or stock car races.

### C. What is Not a Digital Audiovisual Work?

- Video greeting cards (see note below)
- Video or electronic games (see note below)

- Movies, music videos, news and entertainment programs, or video or electronic games transferred other than electronically, such as on a tape or CD.

*Note:* While video greeting cards and video or electronic games transferred electronically are not “digital audiovisual works,” such items are “additional digital goods.” See Part X. for additional information.

## IX. Digital Books

### A. Statutory Language

Section 77.51(3pb), Wis. Stats., provides that:

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

### B. What is a Digital Book?

A digital book is broadly defined to include any literary work (other than a digital audio work or digital audiovisual work) that meets all of the following:

- Is expressed in words, numbers, or other verbal or numerical symbols or indicia.
- Is generally recognized in the ordinary and usual sense as a book, work of fiction or nonfiction, or a short story.
- Is transferred electronically.

Examples of digital books include:

- Novels and autobiographies

- Encyclopedias, dictionaries, and repair manuals
- Phone directories, business directories, zip code directories
- Educational textbooks
- Cookbooks

### C. What is Not a Digital Book?

1. Newspapers or other news or information products transferred electronically are not “digital books.” Examples of “Newspapers or other news or information products” include:

- Newspapers, as defined in Part X.A.
- A web site maintained by or for a local television station which posts current news, weather and sports information for viewing by the person accessing the web site.

**Note (1):** “Newspapers or other news or information products,” while not subject to tax as a “digital book,” may be subject to tax as an “additional digital good.” See Part X. for additional information.

**Note (2):** Newspapers are exempt from sales and use taxes, regardless of whether they are transferred electronically or in paper form.

2. “Periodicals” are not digital books. The statutes do not define the term “periodical.” A “periodical,” according to The American Heritage Dictionary of the English Language, fourth edition (2006), is: “A publication issued at regular intervals of more than one day.”

Examples of periodicals transferred electronically and that are not “digital books” include:

- Magazines issued weekly, monthly or at some other regular interval of more than one day.
- Scientific journals
- Trade publications

- Newspapers issued at regular intervals other than daily.

**Note:** A “periodical,” while not subject to tax as a digital book, may be subject to tax as an “additional digital good.” See Part X. for additional information.

3. Chat room discussions are not digital books.

*Example:* A person, using a computer and Internet access, reaches a web site which hosts a “chat room.” The person enters a login name and password. The person is now able to see various postings by other users, as well as being able to post their own comments to the chat room. The electronic transfer of this information to and/or from the person, is not the electronic transfer of a “digital book.”

4. Blogs are not digital books. The term “blog” is a contraction of the term “web log.” The term typically refers to a web site with regular entries of commentary, descriptions of events, or other material such as graphics or video.

*Example:* A person, using a computer and Internet access, reaches a web site which hosts a blog. The person is able to see the contents of the web log. The electronic transfer of this information is not the transfer of a “digital book.”

**Note:** A “blog,” while not subject to tax as a digital book, may be subject to tax as an “additional digital good.” See Part X. for additional information.

## X. Additional Digital Goods

### A. Statutory Language

Section 77.51(1a), Wis. Stats., provides the following:

“(a) ‘Additional digital goods’ means all of the following, if transferred electronically:

1. Greeting cards.
2. Finished artwork.

3. Periodicals.
4. Video or electronic games.
5. Newspapers or other news or information products.

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

Section 77.51(3rm), Wis. Stats. (2007-08), provides that:

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

- (a) Drawings.
- (b) Paintings.
- (c) Designs.
- (d) Photographs.
- (e) Lettering.
- (f) Paste-ups.
- (g) Mechanicals.
- (h) Assemblies.
- (i) Charts.
- (j) Graphs.
- (k) Illustrative materials.” (Emphasis added)

Section 77.51(8), Wis. Stats., defines “newspaper” as follows:

“ ‘Newspaper’ means those publications which are commonly understood to be newspapers and

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

## B. What Are Additional Digital Goods?

Additional digital goods are those items specifically enumerated by statute (see Part X.A.), transferred electronically, and that are not a digital audio work, a digital audiovisual work, or a digital book.

**Example:** Customer M purchases a one-year subscription to Newspaper X. The subscription provides online access only. No paper copy of the newspaper is provided to Customer M. A newspaper delivered electronically is specifically included as an “additional digital good” and is not a digital audio work, a digital audiovisual work, or a digital book. Thus, Newspaper X’s newspaper delivered electronically is an additional digital good. However, Newspaper X’s sale of the electronic version of its newspaper is exempt under sec. 77.54(50), Wis. Stats. See Part XII. for more information on exemptions for digital goods.

“Other news or information products” refers to products that disseminate news. “News” is defined in The American Heritage Dictionary of the English Language, fourth edition (2006), as: “Information about recent events or happenings, especially as re-

ported by newspapers, periodicals, radio, or television.”

Examples of “other news or information products” that are additional digital goods when transferred electronically include:

- Newsletters
- Information alerts sent by e-mail

**Note:** Information alerts sent by text message to a cell phone user that are associated with or incidental to providing telecommunications services are an “ancillary service.” Ancillary services are subject to tax under sec. 77.52(2)(a)5.c., Wis. Stats.

## XI. Digital Codes

### A. Statutory Language

“Digital Code” is defined by sec. 77.51(3pc), Wis. Stats., to mean:

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

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

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

## B. What is a Digital Code?

A digital code is a code:

- that may be obtained by any means including tangible forms and electronic mail, regardless of whether the code is designated as song code, video code, or book code, and
- allows the person who holds the code the right to obtain any one or more additional digital goods, digital audiovisual works, digital audio works, or digital books.

## C. What is Not a Digital Code?

“Digital code” does not include:

- A code that represents a gift card or gift certificate that allows the holder of the code to select any digital goods at the cash value indicated by the card or certificate.
- A code that is in the nature of or represents cash and that may be used to pay for a future purchase.
- A code that is redeemable for property, items, goods or services other than specified digital goods or additional digital goods.

**Example:** Customer A purchases a “code” from Retailer B. Retailer B mails the “code” to Customer A on a plastic card. The code allows the holder of the card to go online and download a movie (i.e., a digital audiovisual work) from Retailer B’s web site. The “code” is a “digital code” because the code provides Customer A the right to obtain a digital audiovisual work.

**Example:** Customer A purchases a “code” from Retailer B. Retailer B e-mails the “code” to an e-mail address provided by Customer A. The value of the “code” is \$50.00. The recipient of the “code” may go online and download various digital audio works and digital audiovisual

works from Retailer B’s web site. Using the “code” the recipient may use the cash value to pay for the purchases. If the value of the code is exceeded, the recipient may use a credit card to pay for the remaining balance due on the purchase. The “code” is not a “digital code” because the code is in the nature of or represents cash that may be used to pay for future purchases. However, Wisconsin sales or use taxes will apply to the sale or purchase of any digital good which is made using the value of the “code.”

## D. Sales and Use Tax Treatment of Digital Codes

The sale of and the storage, use, or other consumption of a digital code is treated in the same manner as the sale of or the storage, use or other consumption of the digital goods to which the digital code relates.

A retailer making a sale of a digital code that is redeemable for particular digital goods is treated as having made a sale of the digital goods at the time the digital code is sold to the purchaser.

## XII. Exemptions for Digital Goods

### A. Statutory Language

Under sec. 77.54(50), Wis. Stats., a sales and use tax exemption is provided for:

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

### B. Scope of Exemption

The sale of and the storage, use or other consumption of any digital good is exempt from sales and use taxes if the digital good sold in a tangible form would qualify for exemption from sales and use taxes.

**Example:** An entity exempt from Wisconsin sales and use taxes on its purchases of tangible

personal property and taxable services under sec. 77.54(9a)(a), Wis. Stats., purchases finished art from a vendor for \$500. The vendor transfers the finished art electronically to the entity. If the finished art had been transferred to it in a tangible form, the entity could have purchased the artwork without tax under sec. 77.54(9a)(a), Wis. Stats. Thus, the sale of the finished artwork as an additional digital good is exempt from sales and use taxes under sec. 77.54(50), Wis. Stats.

### C. Examples of the Exemptions That May Apply to Digital Goods

The following exemptions from sales and use taxes for sales and purchases of tangible personal property may apply in the case of the sale or purchase of a digital good.

#### 1. Federal Preemption.

**Section 77.54(1), Wis. Stats.**, provides an exemption from sales and use taxes for:

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

**Example:** A U.S. Government agency sells a map which it transfers electronically to Customer B, at a location in Wisconsin. The sale of the map is a sale of a digital good. However, the sale of the digital good is exempt under sec. 77.54(50), Wis. Stats. Had the map been transferred to Customer B in a tangible form, the sale would have been exempt under sec. 77.54(1), Wis. Stats.

#### 2. “Consumed in Manufacturing” Exemption.

**Section 77.54(2), Wis. Stats.**, provides an exemption from sale and use taxes for:

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

**Example:** Company A purchases finished artwork, which constitutes an additional digital good, from Advertising Agency K. The finished artwork is transferred electronically by Advertising Agency K to Printer X. Company A contracts with Printer X to purchase 10,000 pamphlets using the finished artwork. Printer X is to furnish the paper and ink used to print the pamphlets. Company A’s purchase of the additional digital good (the finished artwork) is exempt from Wisconsin sales and use taxes under sec. 77.54(50), Wis. Stats. The additional digital good is used exclusively and directly by Printer X in manufacturing tangible personal property and is consumed, destroyed, or loses its identity in the manufacture of tangible personal property (the pamphlets) destined for sale by Printer X to Company A. Had the finished artwork been purchased in a tangible form and used in the same manner described above, the purchase of the finished artwork would have been exempt under sec. 77.54(2), Wis. Stats.

#### 3. “Consumed in Manufacturing” Exemption – Newspapers, Shopper’s Guides, and Periodicals.

**Section 77.54(2m), Wis. Stats.**, provides an exemption from sale and use taxes for:

“The sales price from the sales of and the storage, use, or other consumption of tangible personal property or services that are used exclusively and directly by a manufacturer in manufacturing shoppers guides, newspapers, or

periodicals and that become an ingredient or component of shoppers guides, newspapers, or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers, or periodicals, whether or not the shoppers guides, newspapers, or periodicals are transferred without charge to the recipient. In this subsection, “shoppers guides,” “newspapers,” and “periodicals” have the meanings under sub. (15). The exemption under this subdivision does not apply to advertising supplements that are not newspapers.”

**Example:** Newspaper X publishes a shopper’s guide, which is distributed weekly, free of charge. Newspaper X purchases finished artwork, which constitutes an additional digital good, from Business B. The finished artwork is incorporated by Newspaper X into one of the weekly editions of its shopper’s guide. Newspaper X’s purchase of the additional digital good (the finished artwork) is exempt from Wisconsin sales and use taxes under sec. 77.54(50), Wis. Stats. The additional digital good is used exclusively and directly in manufacturing tangible personal property and is consumed, destroyed, or loses its identity in the manufacture of a shopper’s guide. Had the finished artwork been purchased in a tangible form and used in the manner described above, the purchase of the finished artwork would have been exempt under sec. 77.54(2m), Wis. Stats.

#### 4. Farming Exemptions.

**Section 77.54(3)(a), Wis. Stats.,** provides an exemption for:

“The sales price from the sales of and the storage, use, or other consumption of tractors and machines, including accessories, attachments, and parts, lubricants, nonpowered equipment, and other tangible personal property, or items or property under s. 77.52 (1) (b) or (c), that are used exclusively and directly, or are consumed or lose their identities, in the business of farming, including dairy farming, agriculture, horticulture, floriculture, silviculture, and custom farming services, but excluding automobiles, trucks, and other motor vehicles for highway use; excluding personal property

that is attached to, fastened to, connected to, or built into real property or that becomes an addition to, component of, or capital improvement of real property; and excluding tangible personal property, or items or property under s. 77.52 (1) (b) or (c), used or consumed in the erection of buildings or in the alteration, repair, or improvement of real property, regardless of any contribution that that personal property, or items or property under s. 77.52 (1) (b) or (c), makes to the production process in that building or real property and regardless of the extent to which that personal property, or items or property under s. 77.52 (1) (b) or (c), functions as a machine, except as provided in par. (c).”

**Example:** Individual F is engaged in the business of farming in Wisconsin. Using a computer and Internet access, Individual F orders a repair manual for a tractor from a vendor engaged in business in Wisconsin. The tractor is used by Individual F exclusively in his farming business. The vendor transfers the repair manual electronically to Individual F. Provided Individual F uses the additional digital good (the repair manual) solely (i.e., 100%) in the business of farming, Individual F may purchase the additional digital good (the repair manual) without tax under sec. 77.54(50), Wis. Stats. Had the repair manual been transferred to Individual F in a tangible form, the purchase would have qualified for exemption under sec. 77.54(3)(a), Wis. Stats., as other tangible personal property consumed in the business of farming.

#### 5. Sales by Elementary or Secondary Schools.

**Section 77.54(4), Wis. Stats.,** provides an exemption for:

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

*Example:* A public high school in Wisconsin holds a fund raising event. Persons attending the event may purchase a “digital code” which allows the person to go to a specified web site and download a copy of the high school’s spring band concert. The high school’s sale of the digital code is treated the same as sale of the digital audio work the digital code may be redeemed for, pursuant to sec. 77.51(17x), Wis. Stats. The high school’s sale of and the purchaser’s storage, use or other consumption in Wisconsin of the digital code is exempt from Wisconsin sales and use taxes under sec. 77.54(50), Wis. Stats. Had the copy of the band concert been transferred by the high school to the purchaser in a tangible form, it would have been exempt from Wisconsin sales and use taxes under sec. 77.54(4), Wis. Stats.

## 6. Certain Transactions Relating To Aircraft, Motor Vehicles, and Truck Bodies.

**Section 77.54(5)(a), Wis. Stats.,** provides an exemption for :

“Aircraft, including accessories, attachments, fuel and parts therefor, sold to persons using such aircraft as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government, or sold to any foreign government for use by such government outside this state and aircraft, motor vehicles or truck bodies sold to persons who are not residents of this state and who will not use such aircraft, motor vehicles or trucks for which the truck bodies were made in this state otherwise than in the removal of such aircraft, motor vehicles or trucks from this state.

*Example:* Airline X purchases a flight manual, which is transferred electronically by the retailer, to Airline X, for one of its passenger aircraft. Airline X assigns the manual to that aircraft. Airline X’s purchase of the manual is exempt from tax under sec. 77.54(50), Wis. Stats. Had the manual been transferred to Airline X in a tangible form, the purchase of the manual would have been exempt under sec. 77.54(5)(a), Wis. Stats.

## 7. Newspapers, Periodicals, Controlled Circulation Publications, and Shopper’s Guides.

**Section 77.54(15), Wis. Stats.,** provides an exemption for:

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

*Example:* Publisher A’s publication meets the definition of a “periodical.” The periodical is regularly issued on a quarterly basis. Publisher A makes the periodical available for sale by subscription as well as for sale by single copy. In addition, Publisher A offers the purchaser the option of having the periodical delivered electronically or having a paper copy mailed to them.

(I) Individual B visits Publisher A’s web site and purchases the current issue of the periodical. Publisher A transfers the periodical electronically to Individual B. Using the sourcing rules under sec. 77.522, Wis.

Stats., Publisher A determines that the sale of the additional good (a periodical transferred electronically), is sourced to a location in Wisconsin. The exemption under sec. 77.54(15), Wis. Stats., does not apply to the sale of the periodical to Individual B, because the periodical is not sold by subscription. Publisher A is liable for Wisconsin sales tax on its sale of the additional digital good (the periodical) to Individual A.

(2) Individual C visits Publisher A’s web site and purchases a one year subscription (4 issues, issued quarterly) of the periodical, to be transferred electronically. Using the sourcing rules under sec. 77.522, Wis. Stats., Publisher A determines that the sale of the subscription of the additional digital good (the periodical issues to be transferred electronically) are sourced to Wisconsin. The sale of this subscription is exempt from Wisconsin sales and use taxes under sec. 77.54(50), Wis. Stats. Had the sale of the subscription of the periodical been for issues to be delivered to Individual C in a tangible format, the sale would have been exempt under sec. 77.54(15), Wis. Stats.

**8. Volunteer Fire Departments – Fire Trucks and Fire Fighting Equipment.**

**Section 77.54(16), Wis. Stats.,** provides an exemption for:

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

**Example:** A Wisconsin township contracts with a volunteer fire department to provide fire and emergency services. The fire department has GPS devices on its fire trucks and emergency vehicles to aid in responding to a fire or other call. The volunteer fire department purchases an updated map for its GPS device. The map is downloaded by the fire department using the Internet, and then installed on its GPS devices. The volunteer fire department’s purchase of the

updated map is exempt from Wisconsin sales and use taxes under sec. 77.54(50), Wis. Stats. Had the purchase of the map been in a tangible format (e.g., on a CD), it would have been exempt from sales and use taxes under sec. 77.54(16), Wis. Stats., as an accessory for a fire truck sold to a volunteer fire department.

**9. Sales by American Legion Baseball Teams**

**Section 77.54(35), Wis. Stats.,** provides an exemption, effective October 1, 2009 and thereafter, for:

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

**Example:** A baseball team affiliated with the Wisconsin Department of American Legion baseball sells photographs of the team and photographs and videos of games the team has played in. The photographs and videos are available online and transferred electronically to the purchaser. The baseball team’s charge to the customer purchasing the photographs or videos is exempt under sec. 77.54(50), Wis. Stats. Had the photographs or videos been transferred by the baseball team using a tangible medium, the sale would have been exempt under sec. 77.54(35), Wis. Stats.

**XIII. IF YOU HAVE QUESTIONS OR NEED ASSISTANCE**

If you have a question about sales and use taxes, visit our web site, write to the department in Madison or call the number below.

**Write** .....Wisconsin Department of Revenue  
P.O. Box 8949, Mail Stop 5-77  
Madison, WI 53708-8949

**Telephone**.....(608) 266-2776

**Fax** . . . . .(608) 267-1030

**E-Mail** . . . . .sales10@revenue.wi.gov