



Tax Releases

“Tax Releases” are designed to provide answers to the specific tax questions covered, based on the facts indicated. In situations where the facts vary from those in a tax release, the answers may not apply. Unless otherwise indicated, tax releases apply for all periods open to adjustment, and all references to section numbers are to the Wisconsin Statutes. (Caution: Tax releases reflect the position of the Wisconsin Department of Revenue, of laws enacted by the Wisconsin Legislature as of the date published in this Bulletin. Laws enacted after that date, new administrative rules, and court decisions may change the answers in a tax release.)

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SALES AND USE TAX

1 Admissions to Amusement, Athletic, Entertainment, or Recreational Events or Places

Introduction: This tax release applies to all sales and purchases of admissions made on and after October 1, 2009. For the proper Wisconsin sales and use tax treatment of sales and purchases of admissions prior to October 1, 2009, see the tax release that was published in *Wisconsin Tax Bulletin* 114 (July 1999). This tax release explains who is responsible for remitting Wisconsin tax on sales of admissions to amusement, athletic, entertainment, or recreational events and places, and when and where the sales of admissions take place.

Statutes: Sections 77.51(1f), (13g), and (14)(intro.), 77.52(2)(a)2.a. and (20), 77.522, and 77.53(3), Wis. Stats. (2009-10)

Wis. Adm. Code: Sections Tax 11.65, 11.945, 11.97, and 11.985 Wis. Adm. Code (November 2010 Register)

Background: Section 77.52(20), Wis. Stats. (2009-10), imposes Wisconsin sales tax on the entire sales price of a "bundled transaction," with certain exceptions. (See Exception, below.)

Section 77.51(1f), Wis. Stats. (2009-10), defines a bundled transaction to mean the retail sale of 2 or more products, not including real property and services to real property, if the products are distinct and identifiable products and sold for one nonitemized price. However a "bundled transaction" does not include, among other things:

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

(b) A transaction that includes taxable and nontaxable products, if the seller's purchase price or the sales price of the taxable products is no greater than 10 percent of the seller's total purchase price or sales price of all the bundled products, as determined by the seller using either the seller's purchase price or sales price, but not a combination of both.

EXCEPTION: If the retailer can identify by reasonable and verifiable standards using the retailer's books and records that are kept in the ordinary course of the retailer's business for other purposes, the portion of the price that is attributable to products that are not subject to tax, that portion of the sales price is not taxable. This exception does not apply to a transaction that includes, among other products, food or food ingredients.

Section 77.51(13g), Wis. Stats. (2009-10), provides in part that a "retailer engaged in business in this state" includes any retailer owning any real property in this state, renting out any tangible personal property located in this state, maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business in this state. It also includes any retailer who 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, deliver-

ing, or taking orders for tangible personal property or taxable services, as well as 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.

Section 77.51(14)(intro.), Wis. Stats. (2009-10), provides that the definition of "sale" includes the transfer of the ownership of, title to, possession of, or enjoyment of tangible personal property or services for use or consumption, but not for resale.

Section 77.52(2)(a)2.a., Wis. Stats. (2009-10), imposes Wisconsin sales tax on the "...sale of admissions to amusement, athletic, entertainment or recreational events or places..."

Section 77.522, Wis. Stats. (2009-10), provides the general rules for determining where a sale is sourced (i.e., where the sale takes place). Services, including the sale of admissions to amusement, athletic, entertainment or recreational events or places, are sourced to the location where the purchaser makes first use of the service.

Section 77.53(3), Wis. Stats. (2009-10), imposes Wisconsin use tax on every retailer engaged in business in Wisconsin who makes sales of tangible personal property or taxable services that are sourced to Wisconsin under sec. 77.522, Wis. Stats. (2009-10).

"Event" and "place" as used in this tax release mean an amusement, athletic, entertainment, or recreational event or place.

Who is the Retailer?

Generally, the retailer responsible for remitting Wisconsin sales tax on sales of admissions is the person engaged in the business of selling admissions to the "consumer." A "consumer" is a person who purchases an admission from a retailer. A "consumer" will generally use that admission to obtain admittance to the event. A "consumer" does not include a person who purchases an admission and then resells the admission in the regular course of the person's business. Therefore, a retailer of admissions may include not only the person who sponsors the event, but also ticket brokers, travel agents, and other persons engaged in the business of selling admissions to consumers. (**Note:** A retailer that is responsible for remitting the tax on the sale of an admission is responsible for remitting all of the state

and local taxes that apply to that sale based on the location to which the sale is sourced (i.e., the location of the event to which the admission applies).)

Example: Football Team A is scheduled to play a football game in Madison, Wisconsin at XYZ Stadium. Football Team A sells admissions to the game for \$25 at its ticket window outside XYZ Stadium. The admissions are sold to individuals, ticket brokers, and travel agents and are paid for at the ticket window. The individuals who purchase the admissions from Football Team A do not resell the admissions, but use them to enter the game. Football Team A receives the proceeds from the sales of the admissions to such persons and controls the admittance of persons to the game.

The ticket brokers and travel agents are engaged in the business of selling admissions to consumers and provide Football Team A with fully completed exemption certificates claiming the resale exemption for the admissions they purchase. The ticket brokers and travel agents then resell the admissions to consumers.

Sales by Football Team A:

Football Team A is the retailer responsible for remitting the applicable Wisconsin state and local sales taxes on its sales of admissions to individuals (i.e., consumers). Football Team A is not responsible for remitting Wisconsin sales tax on its sales of admissions to ticket brokers and travel agents engaged in the business of selling admissions, because Football Team A received fully completed exemption certificates from the ticket brokers and travel agents.

Sales by Ticket Brokers and Travel Agents:

The ticket brokers and travel agents are the retailers responsible for remitting sales tax on their sales of admissions to consumers. (**Note:** Ticket brokers, travel agents, and other retailers that are not registered and are not required to be registered to collect Wisconsin sales or use tax are not required to collect Wisconsin sales or use tax on sales of admissions to events in Wisconsin.)

When and Where Do Sales of Admissions Take Place?

When does the sale take place?

The sale of an admission takes place at the time the retailer agrees to sell the admission to the consumer. Examples 1 to 20 illustrate when the retailer agrees to sell the admission to the consumer.

Where does the sale take place?

The location of the sale of an admission to an amusement, athletic, entertainment, or recreational event and the tax rate that applies is based on the location where the event takes place, since that is where the purchaser will make first use of the admission. (**Note:** Admissions to events or places located outside of Wisconsin are not subject to Wisconsin sales tax.)

Example: Football Team A is scheduled to play a football game in Madison, Wisconsin at XYZ Stadium. Football Team A sells admissions to the game for \$25 at its ticket window outside XYZ Stadium. The admissions are sold to individuals, ticket brokers, and travel agents and are paid for at the ticket window. The individuals do not resell the admissions purchased from Football Team A, but use them to enter the game. Football Team A receives the proceeds from the sales of these admissions and controls the admittance of persons to the game.

The ticket brokers and travel agents are engaged in the business of selling admissions to consumers and provide Football Team A with exemption certificates claiming the resale exemption for the admissions they purchase. The ticket brokers and travel agents resell the admissions they purchased from Football Team A. The admissions are sold to various individuals (i.e., consumers) from the ticket brokers' and travel agents' locations in Milwaukee, Wisconsin.

Sales by Football Team A:

Football Team A is the retailer responsible for remitting sales tax on its sales of admissions to individuals (i.e., consumers). These sales are sourced to the location of XYZ Stadium in Madison, Wisconsin, since that is where the purchaser will make first use of the admission (i.e., where the purchaser will use the ticket to be admitted to the event).

This sale takes place at the time Football Team A agrees to sell the admissions to the individuals.

Sales by Ticket Brokers and Travel Agents:

The ticket brokers and travel agents are the retailers responsible for remitting the Wisconsin sales tax on their sales of admissions to consumers. These sales are sourced to the location of XYZ Stadium in Madison, Wisconsin, since that is where the purchaser will make first use of the admission (i.e., where the purchaser will use the ticket to be admitted to the event) and take place at the time the ticket broker or travel agent agrees to sell the admission.

What Amount is Taxable?

Tax is owed on the "retailer's" selling price of the admission to the consumer.

Example: Football Team A sells an admission for \$25 to Ticket Broker B. Ticket Broker B gives Football Team A a fully completed exemption certificate claiming the resale exemption on its purchase of the admission. Ticket Broker B resells the admission to Individual C for \$40.

Football Team A is not responsible for remitting Wisconsin sales tax on its sale of the admission to Ticket Broker B for \$25, since Ticket Broker B provided Football Team A with a fully completed exemption certificate. Ticket Broker B is the retailer and is responsible for remitting sales tax to the Department of Revenue on the \$40 sale of the admission to Individual C.

Examples of Sales of Admissions

The following examples illustrate (1) who is the retailer responsible for remitting the Wisconsin sales and use tax on sales of admissions; (2) when the sale takes place; (3) where the sale takes place; and (4) the amount subject to Wisconsin sales or use tax. (**Note:** In each of the following examples, if the retailer does not charge the proper Wisconsin sales tax to the purchaser, the purchaser is liable for remitting the applicable Wisconsin use tax to the Department of Revenue.)

"Ticket," as used throughout the following examples, means the piece of paper which is generally given to a person by the retailer as evidence that the person has purchased an admission to attend the event.

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Example 1 - Sale of Ticket by Event Provider at Ticket Window

- Individual A wants to attend a baseball game in Milwaukee, Wisconsin.
- Individual A goes to a ticket window in Milwaukee.
- At the ticket window, Baseball Team B accepts the \$20 payment from Individual A and hands Individual A a ticket to the game.
- On the day of the game, Individual A gives the ticket to Baseball Team B in Milwaukee to obtain admittance to the game.

Who is the retailer?	Baseball Team B
When does the sale take place?	At the time Baseball Team B accepts \$20 payment from Individual A
Where does the sale take place?	At the baseball stadium in Milwaukee
What amount is taxable?	\$20

Note: In the above example, the answers would still be the same if the ticket is mailed to Individual A or Individual A obtains the ticket at a later date.

Example 2 - Telephone Call to Event Provider to Order Ticket

- Individual A wants to attend a rock concert in Madison, Wisconsin.
- Individual A calls Concert Provider B in Milwaukee and orders a ticket to the concert for \$20.
- In Milwaukee, Concert Provider B charges the ticket to Individual A's credit card account and tells Individual A to go to the "Will Call" window in Madison to pick up the ticket.
- In addition to the \$20 for the ticket, Concert Provider B adds a \$5 convenience fee to the price of the ticket for allowing Individual A to purchase the ticket over the telephone and holding the ticket at the "Will Call" window.
- On the day of the concert, Individual A picks up the ticket at the "Will Call" window and uses the ticket to obtain admittance to the concert.

Who is the retailer?	Concert Provider B
When does the sale take place?	At the time Concert Provider B charges the \$25 to Individual A's credit card account
Where does the sale take place?	At the location of the concert in Madison
What amount is taxable?	\$25 (the \$5 convenience fee is part of the sales price of the ticket)

Note: In the above example, the answers would still be the same if the ticket is mailed to Individual A.

Example 3 - Order Blank for Tickets Sent to Event Provider

- Individual A wants to attend a football game in Madison, Wisconsin.
- Individual A, who lives in Madison, fills out an order blank to purchase a \$20 ticket to the game and mails the order blank to Football Team B in Waukesha.
- The order blank includes Individual A's credit card account number and signature authorizing the ticket to be billed to his credit card account.
- In addition to the \$20 charge for each ticket, Football Team B also charges Individual A a \$4 per ticket shipping and handling fee to have the tickets mailed to Individual A's home.
- In Waukesha, Football Team B reviews the order blank, charges the \$24 for the ticket and the shipping and handling fee to Individual A's credit card account, and mails the ticket to Individual A in Madison.
- On the day of the game, Individual A uses the ticket to obtain admittance to the game

Who is the retailer?	Football Team B
When does the sale take place?	At the time Football Team B charges the \$24 to Individual A's credit card account
Where does the sale take place?	At the location where the football game will be played in Madison
What amount is taxable?	\$24 (the \$4 shipping and handling fee is part of the sales price of the ticket)

Note: In this example, the answers would still be the same if Individual A obtains the ticket at a later date, such as at the "Will Call" window on the day of the game.

Example 4 - Person Purchases Ticket to Game, But Does Not Attend Game (No-Shows)

- Individual A wants to attend a football game in Madison, Wisconsin.
- Individual A, who lives in Madison, fills out an order blank to purchase a \$20 ticket to the game and mails the order blank to Football Team B in Waukesha.
- The order blank includes Individual A's credit card account number and signature authorizing the ticket to be billed to his credit card account.
- In addition to the \$20 charge for each ticket, Football Team B also charges Individual A a \$4 per ticket shipping and handling fee to have the tickets mailed to Individual A's home.
- In Waukesha, Football Team B reviews the order blank, charges \$24 to Individual A's credit card account, and mails the ticket to Individual A in Madison.
- Individual A is sick and cannot attend the game.

Who is the retailer?	Football Team B
When does the sale take place?	At the time Football Team B charges the \$24 to Individual A's credit card account
Where does the sale take place?	At the location where the football game will be played in Madison
What amount is taxable?	\$24 (the \$4 shipping and handling fee is part of the sales price of the ticket)

Note: Even though Individual A did not attend the game, the sale of the admission is still subject to Wisconsin sales tax.

Example 5 - Sale by Person Who is Not Event Provider

- Individual A wants to attend a soccer game in Milwaukee, Wisconsin.
- Ticket Broker B in Janesville, Wisconsin is engaged in the business of buying and selling tickets.

- Ticket Broker B goes to Soccer Team C in Milwaukee, pays \$25 to Soccer Team C, provides Soccer Team C with a fully completed exemption certificate claiming resale, and is handed a ticket to the game.
- Individual A goes to Ticket Broker B in Janesville, pays \$50 to Ticket Broker B, and is handed a ticket to the game.
- On the day of the game, Individual A uses the ticket to obtain admittance to the game.

In this example, there are two separate transactions to consider: (1) the sale from Soccer Team C to Ticket Broker B and (2) the sale from Ticket Broker B to Individual A.

Transaction 1 - Sale from Soccer Team C to Ticket Broker B

Who is the retailer?	This sale is not a retail sale subject to tax. It is a sale for resale.
When does the sale take place?	
Where does the sale take place?	
What amount is taxable?	

Transaction 2 - Sale from Ticket Broker B to Individual A

Who is the retailer?	Ticket Broker B
When does the sale take place?	At the time Ticket Broker B accepts the \$50 payment from Individual A
Where does the sale take place?	At the location of the soccer game in Milwaukee
What amount is taxable?	\$50

Note: In the above example, the answers would still be the same if the ticket is mailed to Individual A, or Individual A obtains the ticket at a later date.

Example 6 - Sale by Person Not Engaged in Business in Wisconsin

- Individual A wants to attend a baseball game in Milwaukee, Wisconsin.
- Ticket Broker B in Chicago, Illinois is engaged in the business of buying and selling tickets, but is **not** engaged in business in Wisconsin (i.e., does not have nexus in Wisconsin for sales and use taxes).

- Ticket Broker B purchases a ticket for \$25 from Baseball Team C and provides Baseball Team C with a fully completed exemption certificate claiming resale.
- The ticket is then sent to Ticket Broker B in Chicago.
- At Ticket Broker B's location in Chicago, Individual A pays \$50 to Ticket Broker B and is handed a ticket to the game.
- On the day of the game, Individual A uses the ticket to obtain admittance to the game.

In this example, there are two separate transactions to consider: (1) the sale from Baseball Team C to Ticket Broker B and (2) the sale from Ticket Broker B to Individual A.

Transaction 1 - Sale from Baseball Team C to Ticket Broker B

Who is the retailer?	This sale is not a retail sale subject to tax. It is a sale for resale.
When does the sale take place?	
Where does the sale take place?	
What amount is taxable?	

Transaction 2 - Sale from Ticket Broker B to Individual A

Who is the retailer?	Ticket Broker B *
When does the sale take place?	At the time Ticket Broker B accepts the \$50 payment from Individual A
Where does the sale take place?	At the location of the baseball game in Milwaukee
What amount is taxable?	\$50 *

* Since Ticket Broker B is **not** engaged in business in Wisconsin, Ticket Broker B would not be required to remit Wisconsin sales or use tax on the sale to Individual A. Individual A owes Wisconsin use tax on the \$50 because Individual A used the ticket in Wisconsin to obtain admittance to the game. Credit would only be allowed for the sales or use tax properly paid on the sale from Ticket Broker B to Individual A.

Note: In this example, the answers would still be the same if the ticket is mailed to Individual A, or Individual A obtains the ticket at a later date.

Example 7 - Sale by Person Located Outside Wisconsin and Engaged in Business in Wisconsin

- Individual A wants to attend a soccer game in Milwaukee, Wisconsin.
- Ticket Broker B in Chicago, Illinois is engaged in the business of buying and selling tickets.
- Ticket Broker B is engaged in business in Wisconsin (i.e., has nexus in Wisconsin for sales and use taxes).
- Ticket Broker B purchases a ticket for \$25 from Soccer Team C and provides Soccer Team C with a fully completed exemption certificate, claiming resale.
- The ticket is then sent to Ticket Broker B in Chicago.
- At Ticket Broker B's location in Chicago, Individual A pays \$50 to Ticket Broker B and is handed the ticket.
- On the day of the game, Individual A uses the ticket to obtain admittance to the game.

In this example, there are two separate transactions to consider: (1) the sale from Soccer Team C to Ticket Broker B and (2) the sale from Ticket Broker B to Individual A.

Transaction 1 - Sale from Soccer Team C to Ticket Broker B

Who is the retailer?	This sale is not a retail sale subject to tax. It is a sale for resale.
When does the sale take place?	
Where does the sale take place?	
What amount is taxable?	

Transaction 2 - Sale from Ticket Broker B to Individual A

Who is the retailer?	Ticket Broker B
When does the sale take place?	At the time Ticket Broker B accepts the \$50 payment from Individual A
Where does the sale take place?	At the location of the soccer game in Milwaukee
What amount is taxable?	\$50 *

* See first Note at top of next column

Notes: (1) Since Ticket Broker B is engaged in business in Wisconsin and the game takes place in Wisconsin, Ticket Broker B would be required to remit Wisconsin tax on the sale to Individual A.

(2) In this example, the answers would still be the same if the ticket is mailed to Individual A or Individual A obtains the ticket at a later date.

Example 8 - Event Provider Sells Ticket to Individual Who is Not Engaged in a Business Requiring the Holding of a Seller's Permit, Who Sells Ticket to Ticket Broker, Who Sells Ticket to Different Individual

- Individual A wants to attend a football game which will be played in Green Bay, Wisconsin.
- Individual A goes to Football Team B's ticket window in Green Bay and pays \$25 for the ticket.
- Football Team B accepts the \$25 payment and mails the ticket to Individual A in Waukesha, Wisconsin.
- Individual A later determines she cannot attend the game.
- Individual A, who is not engaged in any trade or business requiring the holding of a seller's permit, sells her ticket to Ticket Broker C for \$40 at Ticket Broker C's headquarters in Milwaukee.
- Ticket Broker C is engaged in the business of buying and selling tickets and holds a Wisconsin seller's permit.
- Ticket Broker C receives a telephone call in Milwaukee from Individual D requesting a ticket to the game and agrees to sell the ticket to Individual D for \$75.
- In addition to the \$75 charge for the ticket, Ticket Broker C charges Individual D a \$5 shipping and handling fee to have the ticket mailed to Individual D's home.
- In Milwaukee, Ticket Broker C charges \$80 to Individual D's credit card account and mails the ticket to Individual D in Milwaukee.

In this example, there are three separate transactions to consider: (1) the sale from Football Team B to Individual A for \$25; (2) the sale from Individual A to Ticket Broker C for \$40; and (3) the sale from Ticket Broker C to Individual D for \$75 plus the \$5 shipping and handling fee.

Transaction 1 - Sale from Football Team B to Individual A

Who is the retailer?	Football Team B *
When does the sale take place?	At the time Football Team B accepts the \$25 payment from Individual A
Where does the sale take place?	At the location of the football game in Green Bay
What amount is taxable?	\$25

* Football Team B is required to collect sales tax on the sale of the ticket to Individual A assuming Individual A did not provide a fully completed exemption certificate to Football Team B.

Transaction 2 - Sale from Individual A to Ticket Broker C

This sale is exempt from Wisconsin sales and use tax because Individual A is not engaged in a trade or business requiring the holding of a seller's permit and the sale qualifies as an exempt occasional sale. **Note:** If Individual A held or was required to hold a seller's permit, the sale to Ticket Broker C would still not be taxable if Ticket Broker C provides a fully completed exemption certificate to Individual A claiming resale. Ticket Broker C could provide an exemption certificate claiming resale since Ticket Broker C is reselling the ticket to Individual D.

Transaction 3 - Sale from Ticket Broker C to Individual D

Who is the retailer?	Ticket Broker C
When does the sale take place?	At the time Ticket Broker C charges \$80 to Individual D's credit card account
Where does the sale take place?	At the location of the football game in Green Bay
What amount is taxable?	\$80 * (the \$5 shipping and handling fee is part of the sales price of the ticket)

* Since Ticket Broker C holds a Wisconsin seller's permit and the game takes place in Wisconsin, Ticket Broker C is required to remit Wisconsin tax on the sale to Individual D.

Example 9 - Event Provider Sells Ticket to Company Engaged in a Business Requiring the Holding of a Seller's Permit, Who Sells Ticket to Ticket Broker, Who Sells Ticket to Individual

- A football game will be played in Green Bay, Wisconsin.
- Company A goes to Football Team B's ticket window in Green Bay, pays \$25 for the ticket, and provides Football Team B with a fully completed exemption certificate claiming resale.
- Football Team B accepts the \$25 payment and mails the ticket to Company A in Waukesha, Wisconsin.
- Company A, who is engaged in a trade or business requiring the holding of a Wisconsin seller's permit, sells its ticket to Ticket Broker C for \$40 at Ticket Broker C's headquarters in Milwaukee.
- Ticket Broker C is engaged in the business of buying and selling tickets and provides Company A with a fully completed exemption certificate claiming resale.
- Ticket Broker C receives a telephone call in Milwaukee from Individual D requesting a ticket to the game and agrees to sell the ticket to Individual D for \$75.
- In addition to the \$75 charge for the ticket, Ticket Broker C charges Individual D a \$5 shipping and handling fee to have the ticket mailed to Individual D's home.
- In Milwaukee, Ticket Broker C charges \$80 to Individual D's credit card account and mails the ticket to Individual D in Milwaukee.

In this example, there are three separate transactions to consider: (1) the sale from Football Team B to Company A for \$25; (2) the sale from Company A to Ticket Broker C for \$40; and (3) the sale from Ticket Broker C to Individual D for \$80 (\$75 plus the \$5 shipping and handling fee).

Transaction 1 - Sale from Football Team B to Company A

Who is the retailer?	This sale is not a retail sale subject to tax. It is a sale for resale.
When does the sale take place?	
Where does the sale take place?	
What amount is taxable?	

Transaction 2 - Sale from Company A to Ticket Broker C

Who is the retailer?	This sale is not a retail sale subject to tax. It is a sale for resale.
When does the sale take place?	
Where does the sale take place?	
What amount is taxable?	

Transaction 1 - Sale from Football Team B to Company A

Who is the retailer?	This sale is not a retail sale subject to tax. It is a sale for resale.
When does the sale take place?	
Where does the sale take place?	
What amount is taxable?	

Transaction 3 - Sale from Ticket Broker C to Individual D

Who is the retailer?	Ticket Broker C
When does the sale take place?	At the time Ticket Broker C charges the \$80 to Individual D's credit card account
Where does the sale take place?	At the location of the football game in Green Bay
What amount is taxable?	\$80 (the \$5 shipping and handling fee is part of the sales price of the ticket)

Transaction 2 - Sale from Company A to Individual C

Who is the retailer?	Company A *
When does the sale take place?	At the time Company A accepts the \$40 payment from Individual C
Where does the sale take place?	At the location of the football game in Green Bay
What amount is taxable?	\$40 *

* Since Company A is engaged in a trade or business requiring the holding of a seller's permit at the time Company A sells the ticket to Individual C, Company A is required to remit Wisconsin sales tax on the \$40 sale of the ticket.

Example 10 - Event Provider Sells Ticket to Company Engaged in a Business Requiring the Holding of a Seller's Permit, Who Sells Ticket to Individual

- A football game will be played in Green Bay, Wisconsin.
- Company A goes to Football Team B's ticket window in Green Bay, pays \$25 for the ticket, and provides Football Team B with a fully completed exemption certificate claiming resale.
- Football Team B accepts the \$25 payment and mails the ticket to Company A in Waukesha, Wisconsin.
- Company A, who is engaged in a trade or business requiring the holding of a seller's permit, sells its ticket to Individual C for \$40 at Company A's headquarters in Waukesha.

In this example, there are two separate transactions to consider: (1) the sale from Football Team B to Company A for \$25 and (2) the sale from Company A to Individual C for \$40.

Example 11 - Event Provider Sells Ticket to Ticket Broker, Who Sells Ticket to Different Ticket Broker, Who Sells to Individual

- Concert Provider B is selling tickets for a concert which will be held in La Crosse, Wisconsin.
- Ticket Broker A is in the business of buying and selling tickets.
- At Concert Provider B's location in La Crosse, Ticket Broker A pays \$30 to Concert Provider B, provides Concert Provider B with a fully completed exemption certificate claiming resale, and is handed a ticket for the concert.
- In Madison, Wisconsin, Ticket Broker C pays \$50 to Ticket Broker A, provides Ticket Broker A with a fully completed exemption certificate claiming resale, and is handed the ticket for the concert.
- Ticket Broker C is also engaged in the business of buying and selling tickets.
- In addition to the \$150 charge for the ticket, Ticket Broker C charges Individual D a \$5 shipping and handling fee to have the ticket mailed to Individual D's home.

- In Milwaukee, Individual D pays \$155 to Ticket Broker C. Ticket Broker C accepts the \$155 payment and mails the ticket to Individual D in Madison.
- On the day of the concert, Individual D uses the ticket to obtain admittance to the concert.

In this example, there are three separate transactions to consider: (1) the sale from Concert Provider B to Ticket Broker A for \$30; (2) the sale from Ticket Broker A to Ticket Broker C for \$50; and (3) the sale from Ticket Broker C to Individual D for \$155 (\$150 plus the \$5 shipping and handling fee).

Transaction 1 - Sale from Concert Provider B to Ticket Broker A

Who is the retailer?	This sale is not a retail sale subject to tax. It is a sale for resale.
When does the sale take place?	
Where does the sale take place?	
What amount is taxable?	

Transaction 2 - Sale from Ticket Broker A to Ticket Broker C

Who is the retailer?	This sale is not a retail sale subject to tax. It is a sale for resale.
When does the sale take place?	
Where does the sale take place?	
What amount is taxable?	

Transaction 3 - Sale from Ticket Broker C to Individual D

Who is the retailer?	Ticket Broker C
When does the sale take place?	At the time Ticket Broker C accepts the \$155 payment from Individual D
Where does the sale take place?	At the location of the concert in LaCrosse
What amount is taxable?	\$155 (the \$5 shipping and handling fee is part of the sales price of the ticket)

Example 12 - Individual Calls Event Provider's Toll-Free Number and Places Order With Operator (Who May or May Not be in Wisconsin) for the Ticket

- Individual A wants to attend a concert in Madison, Wisconsin.
- Individual A calls a toll-free number of Concert Provider B, which is received by an employee of Concert Provider B, to purchase a ticket to the concert in Madison.
- The operator who receives the telephone call may be located anywhere in the United States.
- Concert Provider B is engaged in business in Wisconsin.
- The operator has authority to accept the order and bind Concert Provider B to selling the \$50 ticket to the concert to Individual A.
- In addition to the \$50 charge for the ticket, Concert Provider B charges Individual A a \$5 shipping and handling fee to have the ticket mailed to Individual A's home.
- The operator charges \$55 to Individual A's credit card account and mails the ticket to Individual A in Madison.
- On the day of the concert, Individual A uses the ticket to obtain admittance to the concert.

Who is the retailer?	Concert Provider B *
When does the sale take place?	At the time Concert Provider B charges \$55 to Individual A's credit card account
Where does the sale take place?	At the location of the concert in Madison
What amount is taxable?	\$55 (the \$5 shipping and handling fee is part of the sales price of the ticket)

* Since Concert Provider B is engaged in business in Wisconsin and the concert takes place in Wisconsin, Concert Provider B is required to remit **Wisconsin** tax on the sale to Individual A, regardless of the location of the operator.

Example 13 - Individual Logs Onto Event Provider's Web Site and Provides Credit Card Number Via the Internet

- Individual A wants to attend a baseball game in Milwaukee, Wisconsin.

- Individual A logs onto the Internet homepage of Baseball Team B, orders a \$20 ticket to the game via the Internet, selects "will call" as the ticket delivery method, and provides his credit card account number.
- In addition to the \$20 for the ticket, Baseball Team B adds a \$5 convenience fee to the price of the ticket for allowing Individual A to purchase the ticket over the Internet, charging it to his credit card, and holding the ticket at the "Will Call" window.
- Individual A is notified via e-mail from Baseball Team B located in Milwaukee that his order has been received, \$25 has been charged to his credit card account, and the ticket is to be picked up at the "Will Call" window in Milwaukee on the day of the game.
- On the day of the game, Individual A picks up the ticket at the "Will Call" window and uses the ticket to obtain admittance to the game in Milwaukee.

Who is the retailer?	Baseball Team B
When does the sale take place?	At the time Baseball Team B charges \$25 to Individual A's credit card account
Where does the sale take place?	At the location of the baseball game in Milwaukee
What amount is taxable?	\$25 (the \$5 convenience fee is part of the sales price of the ticket)

Example 14 - Event Takes Place Outside of Wisconsin

- Individual A wants to attend a football game in San Diego, California.
- Individual A contacts Ticket Broker B in Milwaukee, Wisconsin, to obtain a ticket to the game.
- Ticket Broker B is engaged in the business of buying and selling tickets.
- Ticket Broker B calls Football Team C in California, who agrees to sell the ticket to the game to Ticket Broker B for \$50.
- Ticket Broker B provides Football Team C in California with its credit card account number, and Football Team C charges the \$50 ticket to the account and mails the ticket to Ticket Broker B in Milwaukee.

- Individual A goes to Ticket Broker B's location in Milwaukee, gives Ticket Broker B \$100, and Ticket Broker B hands Individual A a ticket to the game.

Since the game takes place outside of Wisconsin, neither of the sales of the ticket to the game is subject to Wisconsin sales or use tax.

Example 15 - Sale of a "Package Deal" Which Includes Lodging, Ticket to Event, and Transportation

- Individual A wants to attend a football game in Green Bay, Wisconsin.
- Individual A contacts Travel Agent B, located in Wisconsin, who is offering a "game day package" for \$300.
- The "game day package" includes one ticket to the game, one night of lodging at a Green Bay hotel, and transportation from the hotel to the game and back to the hotel. The \$300 sales price of the "game day package" is not itemized for the amount relating to the ticket, lodging, or transportation.
- The sales price of the "game day package" does not vary and is not negotiable based on a customer's selection of the products included in the transaction.
- Travel Agent B purchases the ticket to the game from Football Team C for \$75, the lodging from Hotel D for \$50, and the transportation to and from the game from Transporter F for \$25.
- Travel Agent B provides Football Team C and Hotel D with fully completed exemption certificates claiming resale.

Since (1) the "game day package" consists of two or more distinct and identifiable products sold for one non-itemized price, and (2) more than 10 percent of the purchase price or selling price of the package is related to taxable products (admission and lodging), the transaction is a bundled transaction as defined in sec. 77.51(1f), Wis. Stats. (2009-10), and the entire selling price is subject to Wisconsin sales or use tax. **Note:** In this example, if Travel Agent B, through reasonable and verifiable standards using its books and records, can determine the portion of the sales price of the package that is attributable to nontaxable products (the transportation to and from the game), Travel Agent B has the option to collect and remit Wisconsin sales tax only on the portion of the sales price attributable to the taxable products (admission and lodging), as provided in sec. 77.52(20)(b), Wis. Stats. (2009-10).

Example 16 - Sale of a "Package Deal" Which Includes Lodging, Meals, Ticket to Event, and Transportation

- Individual A wants to attend a football game in Green Bay, Wisconsin.
- Individual A contacts Travel Agent B, located in Wisconsin, who is offering a "game day package" for \$400.
- The "game day package" includes one ticket to the game, meals at a Green Bay restaurant, one night of lodging at a Green Bay hotel, and transportation from the hotel to the game and back to the hotel after the game. The \$400 sales price of the "game day package" is not itemized for the amount relating to the ticket, meals, lodging, or transportation.
- The sales price of the "game day package" does not vary and is not negotiable based on a customer's selection of the products included in the transaction.
- Travel Agent B purchases the ticket to the game from Football Team C for \$75, the meals from Restaurant E for \$50, the lodging from Hotel D for \$50, and the transportation to the game from Transporter F for \$25.
- Travel Agent B provides Football Team C, Restaurant E, and Hotel D with a fully completed exemption certificate claiming resale.

Since (1) the "game day package" consists of two or more distinct and identifiable products sold for one non-itemized price, (2) the package includes services and food or food ingredients, and (3) more than 10 percent of the purchase price or selling price of the package is related to taxable products (admission, lodging, and meals), the transaction is a bundled transaction as defined in sec. 77.51(1f), Wis. Stats. (2009-10), and the entire selling price is subject to Wisconsin sales or use tax. **Note:** In this example, since the transaction includes food or food ingredients, Travel Agent B does **not** have the option to collect and remit sales tax only on the portion of the sales price attributable to the taxable products, as provided in sec. 77.52(20)(b), Wis. Stats. (2009-10).

Example 17 - Sale of Ticket Holder's Tickets Using Football Team B's Web Site - Football Team B is Retailer

- Football Team B sells admissions to football games that take place in Eau Claire, Wisconsin.

Football Team B is engaged in business in Wisconsin.

- Customer A has purchased and received season tickets for football games of Football Team B that take place in Eau Claire, Wisconsin.
- Football Team B sells each ticket purchased by Customer A for \$40.
- Football Team B charged Wisconsin sales tax on its sales of these tickets to Customer A.
- Football Team B maintains a web site that allows its season ticket holders to list any of their tickets for sale to other persons.
- Customer A lists one ticket for sale on this web site for \$40.
- Individual X wants to attend a football game in Eau Claire, Wisconsin.
- Individual X logs onto the Internet homepage of Football Team B, purchases this ticket for \$40 plus a required order fee of \$7 and a service fee of \$8.
- Individual X pays Football Team B \$55 (\$40 + \$8 + \$7) for the ticket.
- Football Team B voids the ticket which is in Customer A's possession, and issues a new ticket to Individual X.
- Football Team B issues a check to Customer A for \$32 (the \$40 selling price of the ticket, less the required service fee of \$8 payable to Football Team B).
- Football Team B does not disclose either the identity of the season ticket holder to the purchaser or the identity of the purchaser to the season ticket holder.

In this example, there are two separate transactions to consider: (1) the sale from Football Team B to Customer A for \$40 and (2) the sale from Football Team B to Individual X for \$55.

Transaction 1 - Sale from Football Team B to Customer A

Who is the retailer?	Football Team B
When does the sale take place?	At the time Football Team B accepts the \$40 payment from Customer A
Where does the sale take place?	At the location of the football game in Eau Claire, Wisconsin
What amount is taxable?	\$40 *

Transaction 2 - Sale from Football Team B to Individual X

Who is the retailer?	Football Team B
When does the sale take place?	At the time Football Team B accepts payment from Individual X
Where does the sale take place?	At the location of the football game in Eau Claire, Wisconsin
What amount is taxable?	\$55

* Since Football Team B previously sold the ticket to Customer A for \$40 and assuming Football Team B properly reported the Wisconsin state and local sales taxes on that sale, Football Team B should refund the sales tax to Customer A based on the amount of the original ticket price refunded (\$32), along with the \$32. Football Team B may also claim a deduction on its sales and use tax return for the amount refunded (\$32) to Customer A. If Football Team B does not also refund the sales tax on the amount that it pays Customer A, Football Team B may not claim that deduction (\$32) on its sales and use tax return.

Transaction 2 - Sale from Football Team B to Individual X

Who is the retailer?	Football Team B
When does the sale take place?	At the time Football Team B accepts payment from Individual X
Where does the sale take place?	At the location of the football game in Eau Claire, Wisconsin
What amount is taxable?	\$58 (\$40 + \$8 + \$7 + \$3)

* Since Football Team B previously sold the ticket to Customer A for \$40 and assuming Football Team B properly reported the Wisconsin state and local sales taxes on that sale, Football Team B should refund the sales tax to Customer A based on the amount of the original ticket price refunded (\$32), along with the \$32. Football Team B may claim a deduction on its sales and use tax return for the amount refunded (\$32) to Customer A. If Football Team B does not refund the sales tax on the amount that it pays Customer A, Football Team B may not claim that deduction (\$32) on its sales and use tax return.

Example 18 - Sale of Ticket Holder's Tickets Using Football Team B's Web Site - Football Team B is Retailer. Tickets Delivered Using Will Call.

- Same facts as in Example 17, except that Individual X selects a "will call" delivery option that allows him to pick up the tickets on game day at the stadium.
- Football Team B charges an additional fee of \$3 for this option.

In this example, there are two separate transactions to consider: (1) the sale from Football Team B to Customer A for \$40 and (2) the sale from Football Team B to Individual X for \$58.

Transaction 1 - Sale from Football Team B to Customer A

Who is the retailer?	Football Team B
When does the sale take place?	At the time Football Team B accepts the \$40 payment from Customer A
Where does the sale take place?	At the location of the football game in Eau Claire, Wisconsin
What amount is taxable?	\$40 *

Example 19 - Sale of Ticket Holder's Tickets Using Ticket Broker's Web Site - Ticket Broker is Retailer, But Does Not Have Possession of Tickets

- Ticket Holder gives Ticket Broker the right to sell tickets on Ticket Broker's web site.
- Ticket Broker does not obtain possession of the tickets and the Ticket Holder is responsible for shipping the tickets to the purchaser at the Ticket Broker's direction.
- Ticket Holder sets the selling price of the tickets.
- When a ticket is sold, Ticket Broker sends a check to Ticket Holder for the selling price of the ticket sold, less a \$15 commission.
- Ticket Holder purchased season tickets to football games taking place in Green Bay, Wisconsin from Football Team C.
- Ticket Holder paid \$75 for each ticket.
- Football Team C charged Ticket Holder Wisconsin sales tax on its sales of the tickets.
- Ticket Holder is not in the business of selling tickets for admission to amusement, athletic, recreational, or entertainment events or places and does not hold and is not required to hold a seller's permit.
- Ticket Holder lists one ticket for a game for sale on Ticket Broker's web site.

- Ticket Holder sets the selling price of the ticket at \$100.00.
- Individual D purchases this ticket. In addition to the \$100 price of the ticket, Individual D is required to pay service fees of \$10.00 and shipping costs of \$14.95 to Ticket Broker, for a total purchase price of \$124.95.
- Ticket Broker e-mails Ticket Holder that the ticket has sold.
- Ticket Holder then accesses his or her account on Ticket Broker's web site and (1) confirms that he or she will ship the ticket and (2) accesses a pre-paid and preaddressed shipping label for Delivery Service Q that Ticket Holder prints on his or her own printer.
- Ticket Holder then ships the ticket to Individual D using Delivery Service Q.
- Ticket Broker charges Individual D's credit card for \$124.95, and issues a check to Ticket Holder for \$85.00, which is the selling price of the ticket set by Ticket Holder less the required \$15 commission.
- Ticket Broker does not disclose the identity of Ticket Holder to Individual D, but discloses the identity of Individual D to Ticket Holder when Ticket Holder prints the prepaid shipping label.

In this example, there are three separate transactions to consider: (1) the sale from Football Team C to Ticket Holder for \$75; (2) the sale from Ticket Holder to Ticket Broker for \$85; and (3) the sale from Ticket Broker to Individual D for \$124.95.

Transaction 1 - Sale from Football Team C to Ticket Holder

Who is the retailer?	Football Team C
When does the sale take place?	At the time Football Team C accepts the \$75 payment from Ticket Holder
Where does the sale take place?	At the location of the football game in Green Bay, Wisconsin
What amount is taxable?	\$75

Transaction 2 - Sale from Ticket Holder to Ticket Broker

This sale is exempt from Wisconsin sales and use tax because Ticket Holder is not engaged in a trade or business requiring the holding of a seller's permit and the sale qualifies as an exempt occasional sale. (**Note:** If

Ticket Holder held or was required to hold a seller's permit, the sale to Ticket Broker would still not be taxable if Ticket Broker provides a fully completed exemption certificate to Ticket Holder claiming resale. Ticket Broker could provide an exemption certificate claiming resale since Ticket Broker is reselling the ticket to Individual D.)

Transaction 3 - Sale from Ticket Broker to Individual D

Who is the retailer?	Ticket Broker
When does the sale take place?	At the time Ticket Broker accepts payment from Individual D
Where does the sale take place?	At the location of the football game in Green Bay, Wisconsin
What amount is taxable?	\$124.95 *

* No credit for the Wisconsin state and local sales tax paid by Ticket Holder may be claimed by Ticket Broker and used to reduce the amount of Wisconsin state and local sales tax due on the selling price of the ticket from Ticket Broker to Individual D since Ticket Broker was not the person that paid the sales tax to Football Team C.

Example 20 - Sale of Ticket Holder's Tickets Using Ticket Broker's Web Site - Ticket Broker is Retailer and Takes Possession of Tickets

- Ticket Holder gives Ticket Broker the right to sell tickets on Ticket Broker's web site.
- Ticket Broker receives possession of the tickets from Ticket Holder. The tickets could be in paper form or in a form that can be transmitted electronically.
- Ticket Broker is responsible for delivery of the tickets to the purchaser.
- Ticket Holder sets the selling price of the tickets.
- When a ticket is sold, Ticket Broker sends a check to Ticket Holder for the selling price less a \$15 commission.
- Ticket Holder purchased season tickets to football games taking place in Green Bay, Wisconsin from Football Team C.
- Ticket Holder paid \$75 per ticket and Football Team C charged the appropriate Wisconsin state and local sales tax on the sale.
- Ticket Holder is not in the business of selling tickets for admission to amusement, athletic, recreational, or entertainment events or places and

does not hold and is not required to hold a seller's permit.

- Ticket Holder lists one ticket for a game for sale on Ticket Broker's web site.
- Ticket Holder sets the selling price of the ticket at \$100.00.
- Individual D purchases this ticket. In addition to the \$100 price for the ticket, Individual D is required to pay service fees of \$10.00 and delivery charges of \$14.95 to Ticket Broker, for a total purchase price of \$124.95.
- Ticket Broker delivers the ticket to Individual D. Delivery may be made by mailing Individual D a paper ticket or by using an electronic transmission.
- Ticket Broker charges Individual D's credit card for \$124.95 and issues a check to Ticket Holder for \$85.00, which is the selling price of the ticket set by Ticket Holder less the required \$15 commission.
- Ticket Broker does not disclose the identity of Ticket Holder to Individual D, nor does Ticket Broker disclose the identity of Individual D to Ticket Holder.

In this example, there are three separate transactions to consider: (1) the sale from Football Team C to Ticket Holder for \$75; (2) the sale from Ticket Holder to Ticket Broker for \$85; and (3) the sale from Ticket Broker to Individual D for \$124.95.

Transaction 1 - Sale from Football Team C to Ticket Holder

Who is the retailer?	Football Team C
When does the sale take place?	At the time Football Team C accepts the \$75 payment from Ticket Holder
Where does the sale take place?	At the location of the football game in Green Bay, Wisconsin
What amount is taxable?	\$75

Transaction 2 - Sale by Ticket Holder to Ticket Broker

This sale is exempt from Wisconsin sales and use tax because Ticket Holder is not engaged in a trade or business requiring the holding of a seller's permit and the sale qualifies as an exempt occasional sale. (Note: If Ticket Holder held or was required to hold a seller's permit, the sale to Ticket Broker would still not be tax-

able if Ticket Broker provides a fully completed exemption certificate to Ticket Holder claiming resale. Ticket Broker could provide an exemption certificate claiming resale since Ticket Broker is reselling the ticket to Individual D.)

Transaction 3 - Sale by Ticket Broker to Individual D

Who is the retailer?	Ticket Broker
When does the sale take place?	At the time Ticket Broker accepts payment from Individual D
Where does the sale take place?	At the location of the football game in Green Bay, Wisconsin
What amount is taxable?	\$124.95 *

* No credit for the Wisconsin state and local sales tax paid by Ticket Holder may be claimed by Ticket Broker and used to reduce the amount of Wisconsin state and local sales tax due on the selling price of the ticket from Ticket Broker to Individual D since Ticket Broker was not the person that paid the sales tax to Football Team C.

2 E-Mail Services Provided With Web Hosting

Statutes: Sections 77.51(1f) and (5) and 77.52(2)(a)5m. and (20), Wis. Stats. (2009-10)

Wis. Adm. Code: Section Tax 11.66(2)(d)3. (November 2010 Register)

Applicable Wisconsin Statutes:

Section 77.52(2)(a)5m., Wis. Stats. (2009-10), imposes sales and use tax on:

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

Section 77.51(5), Wis. Stats. (2009-10), provides:

"For purposes of subs. (13) (e) and (f) and (15a) and s. 77.52 (2m), "incidental" means depending upon or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal; or something

incidental to the main purpose of the service. Tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) transferred by a service provider is incidental to the service if the purchaser's main purpose or objective is to obtain the service rather than the property, items, or goods, even though the property, items, or goods may be necessary or essential to providing the service."

Facts:

Taxpayer provides a web hosting service and a telecommunications message service for one price of \$25. For \$25, the customer gets web hosting of their web site on one server and if the customer chooses, they can receive one to ten e-mail accounts hosted on a separate server. The taxpayer does not provide the Internet access for the e-mail, but does provide storage of e-mail messages on a server and the ability for customers to send and receive e-mail messages.

The \$25 fee includes the following:

- 25 megabytes storage, including regular back up
- Up to 10 user e-mail accounts
- 0-5 gigs of bandwidth usage for data transfer
- Domain hosting
- Web server
- E-mail server
- Various (intranet information for online web hit statistics, web-based e-mail access and administration, technical support, telephone support)

Some customers do not use the e-mail accounts available to them and some customers use more than ten e-mail accounts. Usage or non-usage of the one to ten e-mail accounts does not change the price of the web hosting fee of \$25. If a customer uses more than ten e-mail accounts, the customer gets charged \$1 for each e-mail account over ten.

Wisconsin sales and use tax treatment:

No part of the \$25 hosting charge is subject to Wisconsin sales or use tax. The additional charge of \$1 for each e-mail account over ten is subject to Wisconsin sales or use tax.

Analysis:

Web hosting services are not subject to Wisconsin sales or use tax because they are not among the services listed as taxable in sec. 77.52(2)(a), Wis. Stats. (2009-10).

Section 77.52(2)(a)5m., Wis. Stats. (2009-10), imposes sales and use tax on:

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

Section Tax 11.66(2)(d)3., Wis. Adm. Code (November 2010 Register), provides that telecommunications message services include electronic mail services.

As provided in sec. 77.51(5), Wis. Stats. (2009-10), "incidental" means, in part: "depending upon or appertaining to something else as primary ... or something incidental to the main purpose of the service." The e-mail hosting services described above meet the definition of "incidental" because the primary objective of the customers is to receive the web hosting services, not the e-mail account(s) that are included for the \$25 charge.

Section 77.52(2)(a)5m., Wis. Stats., does not apply to the e-mail hosting services because the e-mail hosting services are incidental to the nontaxable web hosting services. As a result, no part of the taxpayer's \$25 charge is taxable. However, the additional charge of \$1 for each e-mail account over ten represents a charge for a telecommunications message service sold separately from the web hosting services, and is subject to Wisconsin sales and use tax, as provided in sec. 77.52(2)(a)5m., Wis. Stats. (2009-10).

Notes: (1) The \$25 charge is not subject to tax as a charge for a "bundled transaction" because neither the web hosting service nor the e-mail hosting service is a taxable service. The definition of "bundled transaction" is provided in sec. 77.51(1f), Wis. Stats. (2009-10), and tax is imposed on "bundled transactions" in sec. 77.52(20), Wis. Stats. (2009-10).

(2) The tax treatment described in this tax release applies to periods both before and after October 1, 2009, the effective date of the legislation passed to conform Wisconsin's sales and use tax laws to the requirements of the Streamlined Sales and Use Tax Agreement.

3 Sales and Use Tax Treatment of Liquid Nurse Tanks, Dry Fertilizer Tender Units, and Liquid Fertilizer and Chemical Storage Tanks

Note: This tax release supersedes any previous rulings on this topic.

Statutes: Sections 77.52(1)(a) and 77.54(3)(a) and (5)(d), Wis. Stats. (2009-10)

Wis. Adm. Code: Section Tax 11.68(6)(j), Wis. Adm. Code (November 2010 Register)

Applicable Wisconsin Statutes:

Section 77.52(1)(a), Wis. Stats. (2009-10), imposes Wisconsin sales and use taxes, in part, on "...the sale, license, lease or rental of tangible personal property sold, licensed, leased or rented at retail in this state..."

Section 77.54(3)(a), Wis. Stats. (2009-10), provides a sales and use tax exemption for, in part:

"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...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..."

Section 77.54(5)(d), Wis. Stats. (2009-10), provides a sales and use tax exemption for the sales price from the sale of and the storage, use or other consumption of:

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

Applicable Wisconsin Administrative Code:

Section Tax 11.68(6)(j), Wis. Adm. Code (November 2010 Register), provides that personal property which becomes a part of realty includes storage tanks constructed on site.

Facts:

Liquid nurse tank. Liquid nurse tanks are purchased by retailers to deliver liquid products to farmers. These units are manufactured with a recirculation pump built into the tank that serves to keep the solution blended

during transport and while waiting to load the sprayer/applicator. Because each chemical in the tank has different densities, heavier materials sink to the bottom of the tank, unless the product is continually mixed, both while the product is in route and after it gets to the site. This mixing prevents the product from separating and becoming unusable. The blending pump in the tank has a dual purpose—blending and mixing the product as well as pumping it out of the tank.

The unit is mounted on a trailer and the retailers tow it behind their trucks to farms and back to the retail business location.

Dry fertilizer tender unit. The dry fertilizer tender unit is used only to transport dry fertilizer from the mixing plant (retailer's business location) to the farms for application. The product is blended at the mixing plant, and is put in the hopper of the tender unit. During transport, the product separates as a result of mechanical sorting due to movement and shaking of the load. The hopper on the tender unit is equipped with an auger which serves to remix the product and to expel product at the time of delivery. This mixing is necessary because the larger particles of fertilizer settle to the bottom of the hopper.

Liquid fertilizer & chemical storage tank. These are stationary tanks, used by retailers to store fertilizer and chemicals before delivering them to farms for application. The tanks are constructed before delivery to the site. The retailers have a series of these tanks at their business locations. Each of the tanks in the series has different chemical and liquid fertilizers stored in them. The retailers use material from the tanks to make a blend that fits a particular farmer's needs. This blended product is put in a nurse tank to deliver it to the farmer.

Wisconsin sales and use tax treatment:

Liquid nurse tanks and dry fertilizer tender units. A retailer's purchase of a liquid nurse tank or dry fertilizer tender unit, as described above, is exempt from sales and use taxes under sec. 77.54(5)(d), Wis. Stats. (2009-10). This exemption applies because the liquid nurse tanks and dry fertilizer tender units are mobile units and are used for mixing and processing.

Liquid fertilizer & chemical storage tanks. A retailer's purchase of the liquid fertilizer and chemical storage tank described above is subject to Wisconsin sales or use tax.

Section 77.52(1)(a), Wis. Stats. (2009-10), imposes tax on retail sales of tangible personal property, unless an exemption applies.

Section Tax 11.68(6)(j), Wis. Adm. Code (November 2010 Register), provides that storage tanks constructed on site become a part of real property. Since the tanks are **not** constructed on site, the tanks remain tangible personal property after the delivery and installation.

A retailer's purchase of a liquid fertilizer or chemical storage tank described above is subject to sales or use tax as a purchase of tangible personal property. The exemption for mobile units discussed above (sec. 77.54(5)(d), Wis. Stats. (2009-10)) does not apply to the purchase because the storage tanks are not mobile, and are not "accessories, attachments, parts, supplies and materials" for mobile units. (**Note:** This answer assumes that the retailer does not use the storage tank exclusively in providing custom farming services for farmers. Custom farming services would include applying fertilizer and chemicals on farm fields for farmers for a fee, but does not include delivering fertilizer and chemicals to farmers for the farmer's application.)