



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 interpretations by 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 interpretations in a tax release.)

The following tax releases are included:

Sales and Use Taxes

1. Voice Over Internet Protocol (VoIP) Service.....	28
2. Voluntary Collection of County and Special District Taxes by Retailer	30
3. Temporary Services Furnished by a Seller's Employees.....	31

SALES AND USE TAXES

1 Voice Over Internet Protocol (VoIP) Service

Statutes: Sections 77.51(17m) and (21m), and 77.52(2)(a)5.a., Wis. Stats. (2003-04).

Wis. Adm. Code: Section Tax 11.66(1)(e) and (4)(a)15., Wis. Adm. Code (November 2002 Register).

Background: Section 77.52(2)(a)5.a., Wis. Stats. (2003-04), imposes a Wisconsin sales tax on the sale of telecommunications services that either originate or terminate in Wisconsin and are charged to a service address in Wisconsin. Section 77.51(21m), Wis. Stats. (2003-04), provides, in part, that "telecommunications services" means:

“...sending messages and information transmitted through the use of local, toll and wide-area telephone service...or any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fi-

ber optics, laser, microwave, radio, satellite or similar facilities....”

Section 77.51(17m), Wis. Stats. (2003-04), provides that:

“‘Service address’ means the location of the telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a buyer. If this is not a defined location; as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems and the like; ‘service address’ means the location where a buyer makes primary use of the telecommunications equipment as defined by telephone number, authorization code or location where bills are sent.”

Some telecommunications and cable television service providers have begun to offer a new telecommunications service, called Voice over Internet Protocol (VoIP), as an alternative to more traditional, circuit-based telephone services. While the Internet is already used as a transmission pipeline by traditional telephony carriers for segments of their business (which use is transparent to the customer), VoIP is designed to allow the user to place telephone calls over the Internet, at times without the use of any telephony circuits dedicated to the call. VoIP requires the user to have a broadband or high speed Internet connection, such as a cable television modem or a digital subscriber line (DSL). Some VoIP services only allow the user to call other users with the same service, while other VoIP services allow users to call anyone with a telephone number, including local, long distance, mobile, and international numbers.

Depending on the provider of the VoIP service, the user may be able to make calls using their regular telephone with an adapter, a telephone connected to their computer, or a microphone connected to their computer. VoIP works by converting a vocal audio signal into a digital signal, which can be transmitted over the Internet in the same manner as e-mail, data, or digital photographic images, and then converting the digital signal back to an audio voice signal.

Some VoIP services are sold at a fixed monthly rate for unlimited local or long distance calls. Other VoIP services are sold at a certain cents-per-minute rate.

Note: The Questions and Answers below assume that VoIP service is not either of the following:

- Telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service (e.g., the customer makes payment on a call-by-call basis using a credit or debit card with no preset number of calling units).
- The right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with the use in a known amount (e.g., the customer pays in advance for a preset number of calling units, such as a typical "phone card," enabling the customer to use an access or authorization code to originate calls until the units are exhausted).

Question 1: Are Voice over Internet Protocol services subject to Wisconsin sales and use tax?

Answer 1: Yes, if the service originates or terminates in Wisconsin and is charged to a service address in Wisconsin. The VoIP services are telecommunications services, as provided in sec. 77.51(21m), Wis. Stats. (2003-04).

Note: Whether the provider has sufficient nexus with Wisconsin such that Wisconsin can require the provider to report sales or use taxes depends on facts not dealt with in this Release. Regardless of whether the provider has sufficient nexus to be required to report tax to Wisconsin, the Wisconsin customer will remain liable for use taxes on the service charges. In this Release, sufficient nexus to require the provider to report tax to Wisconsin will be assumed.

Question 2: If the VoIP service provider knows a VoIP call originates or terminates in Wisconsin, should the VoIP service provider charge Wisconsin sales or use tax?

Answer 2: As provided in sec. 77.51(17m), Wis. Stats. (2003-04), if the seller of the VoIP telecommunications service knows that the location of the telecommunications equipment at which the customer originates or receives the call is in Wisconsin (i.e., Wisconsin "serv-

ice address"), the seller should charge Wisconsin sales or use tax.

Question 3: In the event the VoIP service provider does not know where the VoIP service originates or terminates, where is the service considered furnished for purposes of determining whether the call is subject to Wisconsin sales or use tax?

Answer 3: If the seller of the VoIP telecommunications service does not know the location of the telecommunications equipment at which the customer originates or receives the call, the seller should charge sales or use tax based on the location of the customer's place of primary use, as provided in sec. 77.51(17m), Wis. Stats. (2003-04). The customer's place of primary use is the street address where the customer's use of the VoIP service primarily occurs (i.e., the residential street address or the primary business street address of the customer).

Example 1: Customer A subscribes to a broadband Internet service. Customer A accesses the Internet through a computer with cable television modem in Customer A's home. Customer A also subscribes to the cable television company's VoIP telephone service, which enables Customer A to place unlimited local and long distance telephone calls from Customer A's home for a charge of \$40.00 per month. A telephone is connected to Customer A's computer in order to make VoIP calls. All calls originate from Customer A's home in Wisconsin.

The \$40.00 charge for Customer A's VoIP telephone service is subject to Wisconsin sales or use tax because it is a telecommunications service that originates in Wisconsin and is charged to a service address in Wisconsin.

Example 2: Customer B subscribes to a DSL Internet service. Customer B accesses the Internet through a computer in Customer B's home in Wisconsin. Customer B also subscribes to the Internet service provider's VoIP telephone service, which enables Customer B to place unlimited local and long distance telephone calls each month from anywhere in the United States for a charge of \$40.00 per month. Customer B uses a telephone and special adapter to make VoIP calls. The VoIP service provider does not know where the individual VoIP calls made by Customer B originate or terminate.

The \$40.00 monthly charge for Customer B's VoIP telephone service is subject to Wisconsin sales or use tax because it is a telecommunications service and Cus-

customer B's place of primary use is in Wisconsin (Customer B's home).

Example 3: Customer C subscribes to a DSL Internet service. Customer C accesses the Internet through a computer in Customer C's office in Wisconsin. Customer C also subscribes to a separate VoIP telephone service, which enables Customer C to place 500 minutes of local and long distance telephone calls each month from anywhere in the United States for a charge of \$15.00 per month. Customer C uses a telephone and special adapter to make VoIP calls. The VoIP service provider does not know where the individual VoIP calls made by Customer C originate or terminate.

The \$15.00 monthly charge for Customer C's VoIP telephone service is subject to Wisconsin sales or use tax because it is a telecommunications service and Customer C's place of primary use is in Wisconsin (Customer C's office).

Note: Examples 2 and 3 highlight the use of the "service address" to determine where the VoIP service is furnished, when the VoIP provider does not know where the individual VoIP calls originate or terminate. Refer to Question and Answer 3 above.

Example 4: Customer D subscribes to a DSL Internet service. Customer D accesses the Internet through a computer in Customer D's office in Wisconsin. Customer D also subscribes to a separate VoIP telephone service, which enables Customer D to place local and long distance telephone calls from anywhere in the United States for a charge of six cents per minute. All of Customer D's VoIP calls are charged to Customer D's Wisconsin telephone number. Customer D uses a telephone and special adapter to make VoIP calls. The VoIP service provider knows where the individual VoIP calls made by Customer D originate and terminate.

Wisconsin sales tax applies to the six cents per minute charge for Customer D's VoIP telephone calls that originate in Wisconsin or terminate on Customer D's telecommunications equipment in Wisconsin. Customer D's VoIP calls that originate in another state and terminate either in another state or on telecommunications equipment in Wisconsin of a person other than Customer D (not Customer D's service address) are not subject to Wisconsin sales or use tax.


Note: In this example, if the VoIP service provider knows where the VoIP calls originate, but does not know where the calls terminate, Customer D owes Wisconsin use tax on VoIP calls that originate outside Wisconsin

and terminate on Customer D's telecommunications equipment in Wisconsin, but would be allowed credit for sales tax paid to the state where the call originated.

Example 5: Customer E subscribes to a DSL Internet service. Customer E accesses the Internet through a computer in Customer E's Wisconsin home for a charge of \$50.00 per month. The DSL Internet service includes a VoIP telephone service at no separate charge. The VoIP telephone service enables Customer E to place unlimited local and long distance telephone calls each month from anywhere in the United States for no charge, as long as Customer E uses a special adapter supplied by the Internet service provider. The Internet service provider charges \$10.00 per month for the adapter. Customer E must use the adapter furnished by the Internet service provider in order to obtain the VoIP service (i.e., the adapter may not be leased or purchased from another party). The VoIP service provider does not know where the individual VoIP calls made by Customer E originate or terminate.

The entire \$60.00 monthly charge for Customer E's Internet service and adapter is subject to Wisconsin sales tax because it is a telecommunications service and Customer E's place of primary use is in Wisconsin (Customer E's home). The Internet service provider's purchase of the adapter is subject to Wisconsin sales or use tax because the adapter is transferred incidentally in providing the Internet service.

Example 6: Assume the same facts as in Example 5, except Customer E may lease or purchase the VoIP adapter from a person other than the Internet service provider (i.e., the adapter is not transferred incidentally in providing the Internet service).

The entire \$60.00 monthly charge for Customer E's Internet service and adapter is subject to Wisconsin sales tax. The Internet service provider is selling a taxable telecommunications service and Customer E's place of primary use is in Wisconsin (Customer E's home). The Internet service provider is also leasing tangible personal property (the adapter) to Customer E. The Internet service provider may purchase the adapter without tax for resale because the adapter is transferred separate from the Internet service. 

2 Voluntary Collection of County and Special District Taxes by Retailer

Statutes: Sections 77.53(9m), 77.71(2), 77.73(1), and 77.79, Wis. Stats. (2003-04).

Wis. Adm. Code: Section Tax 11.97(3), (4), (7), and (8), Wis. Adm. Code (October 1997 Register), titled “‘Engaged in business’ in Wisconsin.”

Background: Section 77.53(9m), Wis. Stats. (2003-04), provides that any person who is not otherwise required to collect the Wisconsin sales or use tax and who makes sales to persons within Wisconsin of tangible personal property or taxable services, the use of which is subject to tax may, if the person so elects, register with the department, under the terms and conditions that the department imposes, and shall obtain a valid business tax registration certificate, and thereby be authorized and required to collect, report, and remit to the department the Wisconsin use tax.

Section 77.79, Wis. Stats. (2003-04), provides that the provisions of subch. III of ch. 77, Wis. Stats. (i.e., general sales and use taxes), including those related to exemptions, exclusions, and the retailers’ discount, that are consistent with subch. V (i.e., county and special district sales and use taxes) apply to the county and special district taxes.

Facts and Question 1: A retailer has a furniture store located in a county that has not adopted the county or special district sales and use tax (i.e., a nontaxable county). The retailer is not engaged in business outside the nontaxable county. The retailer hires a common carrier for all furniture deliveries.

On sales of furniture that are transported by common carrier to a customer in a taxable county, may the retailer voluntarily collect the 0.5% county, the 0.5% football stadium district, and/or the 0.1% baseball stadium district taxes from the customer and report such tax(es) on its sales and use tax return (including remitting the tax to the Department of Revenue)?

Answer 1: Yes, a retailer who is not engaged in business in a taxable county may voluntarily collect, report, and remit the county and special district taxes on its sale in a taxable county.

Facts and Question 2: Assume the same facts as in *Facts and Question 1*, and that the furniture store is located in Rock County, which has not adopted a county or special district tax. The furniture store voluntarily collects, reports, and remits Milwaukee County tax and the baseball stadium tax on sales made in Milwaukee County. Is the retailer required to collect the county tax and baseball stadium tax on sales it makes in other taxable counties?

Answer 2: Yes, a retailer who voluntarily collects county or special district tax on sales in one county in which it is *not* engaged in business must collect the applicable tax on *all* sales subject to county and/or special district taxes. In this case, the retailer must continue to collect such taxes on *all* sales subject to county and/or special district taxes, unless it *completely* stops voluntarily collecting county and special district taxes for *all* of its sales in counties in which it is not engaged in business. [☞](#)

3 Temporary Services Furnished by a Seller’s Employees

Statutes: Section 77.52(2), Wis. Stats. (2003-04).

Wis. Adm. Code: Sections Tax 11.67(2) (April 2000 Register), Tax 11.68(2) (June 1999 Register), Tax 11.71(2) (April 1993 Register), and Tax 11.86(6) (May 1999 Register).

Background: Section 77.52(2), Wis. Stats. (2003-04), provides that, for the privilege of selling, performing, or furnishing certain services at retail in Wisconsin to consumers or users, a tax is imposed upon all persons selling, performing, or furnishing the services at the rate of 5% of the gross receipts from the sale, performance, or furnishing of the services.

Services subject to Wisconsin sales tax include the following (this list is not all-inclusive):

- Recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser’s direction, but not including those services if they are merely an incidental, as defined in sec. 77.51(5), Wis. Stats. (2003-04), element of another service that is sold to that purchaser and is not taxable under the sales and use tax law. Sec. 77.52(2)(a)5m, Wis. Stats. (2003-04).
- The repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of all items of tangible personal property unless:
 - When installed or applied, the installation or application of the tangible personal property will constitute an addition or capital improvement of real property.
 - At the time of such repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance, a sale in Wisconsin of the type of

property repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected, or maintained would have been exempt to the customer from sales taxation, other than the exempt sale of a motor vehicle or truck body to a nonresident under sec. 77.54(5)(a), Wis. Stats. (2003-04), and other than nontaxable sales under sec. 77.51(14r), Wis. Stats. (2003-04).

Sec. 77.52(2)(a)10, Wis. Stats. (2003-04), and secs. Tax 11.68(2) (June 1999 Register) and Tax 11.71(2) (April 1993 Register), Wis. Adm. Code.

- Landscaping and lawn maintenance services including landscape planning and counseling, lawn and garden services such as planting, mowing, spraying, and fertilizing, and shrub and tree services. Sec. 77.52(2)(a)20, Wis. Stats. (2003-04), and sec. Tax 11.86(6) (May 1999 Register), Wis. Adm. Code.

Section Tax 11.67(2)(c), Wis. Adm. Code (April 2000 Register), provides that if there is a single charge for providing both taxable and nontaxable services, the entire charge is subject to the tax, unless it is determined by the department that another method, such as allocation or primary purpose of the transaction, more accurately reflects the tax. If the charges for taxable and nontaxable services are separately stated on an invoice, the tax applies only to the charge properly attributable to the taxable services, unless it is determined by the department that the primary purpose of the transaction method for computing the tax more accurately reflects the tax.

Facts and Question 1: Company A is a building management company. Company A hires Individual B to mow lawns at the properties that Company A owns. Company A provides Individual B with training and tools to perform his services, has the right to fire Individual B, and provides general direction and control over the mowing services furnished by Individual B. Company A is required to withhold income taxes and pay employment taxes on amounts paid to Individual B, and to furnish unemployment insurance and workers compensation benefits for Individual B.

Are wages paid by Company A to Individual B subject to Wisconsin sales tax when the services being performed by Individual B for Company A are those that are subject to tax under sec. 77.52(2)(a), Wis. Stats. (2003-04)?

Answer 1: No. There is no sale of taxable services when an employee furnishes or performs services for an employer and the employee is paid wages by the employer as compensation for those services.

Although Individual B is performing lawn maintenance services, because Individual B is an employee of Company A, amounts paid by Company A to Individual B (wages) are not subject to Wisconsin sales tax.

Facts and Question 2: Company C enters into a contract with Company Z under which Company Z specifies services to be provided and the fee to be paid to Company C for supplying Company C's employees to perform the services. That fee may be a lump sum or may be an amount per hour per employee supplied. Under Company Z's contract with Company C, Company Z has some control over Company C's employees in setting hours, assigning tasks that are to be performed by Company C's employees, and determining where tasks will be performed. Company C retains the right to control and direct its employees, including the right to discharge or reassign an employee. Company C hires the employees, controls the payment of their wages, provides them with unemployment insurance and other benefits, and is the employer for employment tax purposes.

Are charges by Company C to Company Z for the services performed by Company C's employees subject to Wisconsin sales tax?

Answer 2: If the services being performed by Company C's employees for Company Z are services subject to tax under sec. 77.52(2)(a), Wis. Stats. (2003-04), the charges by Company C to Company Z for furnishing such services are subject to Wisconsin sales tax, unless an exemption applies.

The persons performing the services for Company Z are employees of Company C, not Company Z. As such, Answer 1 above does not apply to the charges by Company C to Company Z for services furnished under the contract. The employees furnishing services to Company Z are not employees of Company Z.

Example 1: Company D enters into a contract to provide on-site facility operations services at an office complex owned by Company X. Services include:

- Ensuring proper operation of building mechanical systems (i.e., furnaces, boilers, central air conditioning, water heaters, and water softeners). The services include monitoring temperature, program-

ming changes to the mechanical system, and inspection, maintenance, and repair of the mechanical system.

- Changing light bulbs and tubes.
- Moving furniture.
- Clearing clogged plumbing pipes.
- Routine and repetitive janitorial services.
- Lawn and garden services, such as mowing, fertilizing, and trimming.
- Snowplowing, sanding, and salting parking lots and sidewalks.

Company D, under its contract with Company X, will supply the following employees for 40 hours each week for a period of one year, to furnish the services to Company X:

- One maintenance engineer at \$50 per hour.
- Two general laborers at \$25 per hour each, one to perform indoor activities, and one to perform outdoor activities.
- One heating, cooling, and plumbing professional at \$75 per hour.

Company X will set the schedule the employees will work, not to exceed 40 hours per week, and determine where the work will be performed. Company X will pay Company D on a monthly basis. Company X will prioritize and assign the tasks that must be performed as outlined in its contract with Company D. Company X will also supply tools, parts, and supplies necessary to perform the services. Company X may ask for replacement employees if it is not satisfied with the performance of the employees supplied. However, Company D will hire/fire the employees, control the payment of their wages, provide them with unemployment insurance and other benefits, and be the employer for employment tax purposes.

The portion of the monthly charge by Company D to Company X for the following services is subject to Wisconsin sales tax under sec. 77.52(2)(a), Wis. Stats. (2003-04):

- Inspection, maintenance, and repair of furnaces, boilers, central air conditioning, water heaters, and water softeners.
- Lawn and garden services, such as mowing, fertilizing, and trimming.
- Changing light bulbs and tubes.

The portion of the monthly charge for the following services is not subject to tax under sec. 77.52(2)(a), Wis. Stats. (2003-04):

- Monitoring building temperature for purposes of making programming changes to the mechanical system that adjust temperature and air flow.
- Moving furniture.
- Clearing clogged plumbing pipes.
- Routine and repetitive janitorial services.
- Snowplowing, sanding, and salting parking lots and sidewalks.

Company D may determine the portion of a lump sum charge to Company X that is subject to tax based on time spent by its employees doing the various activities as evidenced by time reports. Other reasonable methods of allocation are also acceptable. For example:

- Alternative 1 – Primary Nature of Services Performed for Job Description

When Company D assigns employees to perform services for its customer, the employees do not keep detailed records of the activities furnished to the customer or the time spent doing specific activities. However, Company D does know that:

- Its maintenance engineer is responsible for monitoring building temperature and programming changes to the mechanical system, which are non-taxable services. The maintenance engineer may perform some of the taxable activities that would normally be performed by the heating, cooling and plumbing professionals, but the amount of that type of work is small and would not be known by Company D.
- Its outdoor general laborer will furnish lawn and garden services in the spring, summer, and fall, which are taxable services, and snowplowing,

sanding, and salting services in the winter, which are nontaxable services. This general laborer may perform other incidental activities for Company D, which may be taxable or not taxable and, which are not known to Company D.

- Its indoor general laborer will perform routine and repetitive janitorial services, move furniture, and change light bulbs and tubes.
- Its heating, cooling, and plumbing professional will inspect, maintain, and repair furnaces, boilers, central air conditioning systems, water heaters, and water softeners and occasionally unclog plumbing pipes. The professional may also be asked in very limited instances to assist contractors who have been hired by Company X to install or replace heating and cooling equipment.

Since Company D does not maintain any detail that would allow it to allocate its charges for services furnished to Company X based on the time spent doing each of the services furnished, it is acceptable for Company D to collect and remit sales tax on the charge for services performed by employees based on the primary nature of the services performed by the employees as properly indicated in their job descriptions. Therefore, charges for services furnished by the outdoor laborer (during the winter months), maintenance engineer, and indoor laborer are not subject to Wisconsin sales or use tax because the services the employees furnish are primarily nontaxable services. Charges for the outdoor laborer during the spring, summer, and fall months and the heating, cooling, and plumbing professional are taxable because the services these employees furnish are primarily taxable services.

- **Alternative 2 – Time Spent on Specific Activities**

When Company D assigns employees, it requires that its employees keep a log or time sheet that indicates specific activities they were directed by Company X to complete and the time spent doing the specific activities. This documentation may be used by Company D for purposes of monthly billings to Company X, performance measurements, etc. Company D may allocate its charge to Company X between taxable and nontaxable services based on the logs or time sheets completed by the employees that indicate the time spent by each employee performing the specific activities. If the heating, cooling, and plumbing professional spent 150 hours of a 184-hour month repairing furnaces, boilers, air conditioning systems, and water heaters and softeners and the remaining 34 hours helping contractors install heating

and cooling equipment in making real property improvements, the portion of the charge subject to tax for the heating, cooling, and plumbing professional for the month would be determined as follows:

Hours worked during the month	184
Price per hour	<u>X 75</u>
Monthly charge	13,800
Percentage of time performing taxable services (150 hours ÷ 184 hours)	<u>X 82%</u>
Amount subject to tax	<u>\$11,316</u>

- **Alternative 3 – No Documentation for Allocation**

If Company D maintains no documentation (time sheets or logs, position descriptions, etc.) that it could use to make a reasonable allocation of lump sum charges for both taxable and nontaxable services furnished to its customer, the entire charge is subject to Wisconsin sales or use tax.

Example 2: Company J is a temporary service agency that provides personnel to various business clients to perform duties as described below:

- **Accountant** – Compiles and analyzes financial information to prepare entries to accounts, such as general ledger accounts; documents business transactions; and analyzes financial information detailing assets, liabilities, and capital and prepares balance sheet, profit and loss statement, and other reports to summarize current and projected company financial position.
- **Accounting Clerk** – Compiles and sorts documents, such as invoices and checks, substantiating business transactions; verifies and posts details of business transactions; and computes and records charges, refunds, cost of lost or damaged goods, freight charges, rentals, and similar items.
- **Administrative Assistant** – Aids executive in staff capacity by coordinating office services, such as personnel, budget preparation and control, house-keeping, records control, and special management studies; coordinates collection and preparation of reports; and reviews and answers or forwards correspondence.
- **Architect** – Researches, plans, designs, and administers building projects for clients, not including landscape planning and counseling.

- **Computer Programmer** – Converts data from project specifications and statements of problems and procedures to create computer programs; enters program code created by programmer into computer system; inputs test data into computer; writes instructions to guide operating personnel during production runs; analyzes, reviews, and rewrites programs to increase operating efficiency or to adapt program to new requirements; and compiles and writes documentation of program development and subsequent revisions.
 - **Data Entry Operator** – Operates keyboard or other data entry devices to enter data into a computer or onto magnetic tapes or disks; and compares data entered with source.
 - **Drafter** – Prepares detailed drawings of architectural designs and plans for buildings according to specifications, sketches, and rough drafts provided by an architect.
 - **File Clerk** – Reads, sorts, and files records in alphabetical or numerical order, or according to subject matter or other system; and locates and removes files upon request and keeps records of material removed.
 - **Customer Service Representative** – Receives and enters orders from customers and handles customer inquiries.
 - **Legal Secretary** – Aids in preparation of legal papers and correspondence of a legal nature, such as summonses, complaints, motions, and subpoenas.
 - **Mail Clerk** – Sorts incoming mail for distribution, distributes incoming mail, and dispatches outgoing mail.
 - **Mechanical Engineer** – Researches, plans, and designs mechanical and electromechanical products and systems.
 - **Nurse** – Provides general nursing care to patients in a hospital, nursing home, infirmary, or similar health care facility, including administering medications and treatments; prepares equipment and aids physician during treatments and examinations of patients; and observes and records condition of patient.
 - **Nurse Assistant** – Performs any combination of the following duties in care of patients in a hospital, nursing home, or other medical facility, under direction of nursing and medical staff; answers signal lights, bells, or intercom system to determine patients' needs; bathes, dresses, and undresses patients; serves and collects food trays and feeds patients requiring help; transports patients, using wheelchair or wheeled cart, or assists patients to walk; and changes bed linens, runs errands, directs visitors, and answers the telephone.
 - **Office Manager** – Coordinates activities of clerical personnel and analyzes and organizes office operations and procedures.
 - **Personnel Manager** – Conducts programs concerning employee recruitment, selection, training, development, retention, promotion, compensation, benefits, labor relations, and occupational safety.
 - **Shipping and Receiving Clerk** – Verifies and keeps records of incoming and outgoing shipments and prepares items for shipment.
 - **Word Processing Operator** – Operates word processing equipment to compile, type, revise, combine, edit, print, and store documents; and proofreads and edits documents for grammar, spelling, punctuation, and format.
- Company J's clients provide training and supervision and set the hours Company J's employees must work. Company J controls the payment of its employees' wages, provides them with unemployment insurance and other benefits, and is the employer for employment tax purposes.
- Company J charges clients a set hourly rate determined by job classification for the services performed by its employees.
- Hourly rates charged by Company J to its clients for services performed as described in the job classifications above are not subject to Wisconsin sales or use tax. Such services are not subject to Wisconsin sales tax under sec. 77.52(2)(a), Wis. Stats. (2003-04).
- Example 3:** Company Y had a staff of ten employees that provided information technology services, including installation of computer hardware and software, maintenance of computer hardware and software, and programming services to all company employees. For financial and technological reasons, Company Y eliminated the jobs of those ten employees.

Company Y enters into a contract with Company E for information technology services for a period of three years. Company E employees will work at Company Y's site installing hardware and software, inspecting and maintaining software and hardware and providing custom programming, training, and help-desk support to Company Y's remaining employees. Help desk support consists of answering questions from Company Y employees about the operation of their computer hardware and software. Any maintenance that may be required as a result of a question to the help desk is done by other Company E employees.

On a daily basis, Company Y assigns tasks, sets deadlines, and monitors the work being performed by Company E employees.

Company E retains the right to substitute its employees as needed with the approval of Company Y. Company E controls the payment of wages to its employees, provides them with unemployment insurance and other benefits, and is the employer for employment tax purposes.

Company E charges Company Y \$150,000 per month for the services it provides. The portion of the \$150,000 charge subject to Wisconsin sales tax for furnishing taxable services (installation of hardware and software, except custom software, and inspection and maintenance of hardware and software, except custom software) may be determined using the alternatives described in Example 1 or any other reasonable alternative.

Example 4: Company F is a retail supermarket chain. Company F is contemplating selling its business. It must make an itemization of all inventory on hand as of the end of its fiscal year. Company F does not have the staff available to itemize the inventory. It contacts Company K, an employment agency, who will provide two people (Individuals X and Y) at a charge of \$25 per hour per person to itemize the inventory.

Company F requires that Individuals X and Y itemize the inventory during the hours the store is closed to the general public, within a two-week time frame. Company F's owner determines the order in which categories of inventory will be itemized, and the reporting format. The owner will supervise the work done by Individuals X and Y. However, Company K controls the payment of their wages, provides them with unemployment insurance and other benefits, and is the employer for employment tax purposes.

It takes 80 hours each for Individuals X and Y to complete the inventory itemization. The employment agency charges Company F \$4,000 for the services performed by Individuals X and Y.

The \$4,000 charge by the employment agency to Company F is not subject to Wisconsin sales tax. Taking inventory is not a service that is subject to Wisconsin sales tax under sec. 77.52(2)(a), Wis. Stats. (2003-04).

Example 5: Company G contracts with a temporary service agency to provide a person to perform various office functions while its employee is on maternity leave. Office functions include answering the telephone and taking messages for sales staff, data entry, filing, and word processing. Company G provides training and supervision and sets the hours the person must work. The temporary service agency controls the payment of its employee's wages, provides him or her with unemployment insurance and other benefits, and is the employer for employment tax purposes.

The temporary service agency charges Company G \$500 per week for the services performed by the person.

The \$500 weekly charge is not subject to Wisconsin sales tax. Data entry, filing, and word processing are not services subject to Wisconsin sales tax. The taking of telephone messages for sales staff, by itself, is a service subject to tax under sec. 77.52(2)(a)5m, Wis. Stats. (2003-04). However, when it is provided incidentally with nontaxable office services, it is not subject to Wisconsin sales tax.

Example 6: Assume the same facts as in Example 5, except that the temporary service agency person is provided only to act as a telephone receptionist (i.e., answer telephones and take messages for staff that is not available).

The \$500 weekly charge is subject to Wisconsin sales tax. The taking of telephone messages is a service subject to tax under sec. 77.52(2)(a)5m, Wis. Stats. (2003-04), when not provided incidentally with other nontaxable services.

Example 7: Company H is an LLC that is disregarded as a separate entity for income tax purposes but not for Wisconsin sales and use tax purposes. Company V is the owner of Company H. Company H owns trucks that are used to haul tangible personal property for Company V. Company H does not have any employees. Company H contracts with Company V to obtain drivers to drive Company H's trucks.

The charge by Company V to Company H is not subject to Wisconsin sales or use tax. The service of driving trucks is not a service that is subject to Wisconsin sales or use tax under sec. 77.52(2)(a), Wis. Stats. (2003-04).

Example 8: Company I is a landscaping company. Company I does not have enough employees to perform landscaping services it has contracted to provide for customers during the months of May through September. Company I contracts with a temporary service agency to provide four people to perform various landscaping services, including mowing and fertilizing lawns, planting grass, flowers, shrubs, and trees, and installing retaining walls, patios, and decorative lighting. The temporary service agency controls the payment of its employees' wages, provides them with unemploy-

ment insurance and other benefits, and is the employer for employment tax purposes.

The temporary service agency charges Company I \$1,200 per week for the services performed by its employees.

The \$1,200 weekly charge is not subject to Wisconsin sales tax because the services are for resale. Although mowing and fertilizing lawns and planting grass, flowers, shrubs, and trees are landscaping services subject to Wisconsin sales tax under sec. 77.52(20), Wis. Stats. (2003-04), Company I is reselling those services to its customers. Company I should provide the temporary service agency an exemption certificate (Form S-220) claiming resale.