



To: Senate Committee on Universities and Revenue
From: Cori Lamont, Senior Director of Legal and Public Affairs
Date: December 4, 2023
RE: SB 351/AB 353: Sales Tax Application to Wisconsin Multiple Listing Services

The WRA supports SB 351/AB 353, creating statutory clarification as to a sales tax exemption for the sale of certain Multiple Listing Service (MLS) services.

Background

The Wisconsin Statutes define digital goods to include “newspapers or other information products.”¹ In 2021, The Wisconsin Department of Revenue (DOR) expanded the scope of “digital goods” guidance to include access to online databases. In November 2021, the DOR revised Publication 240 to clarify that “other news or information products” are not limited to products that disseminate news but also include any products that disseminate information, where information is a collection of facts or data (not necessarily news-related).² Examples in Publication 240 indicate that “newspapers or other information products” specifically includes access to an online database or website of current or historical information that allows the user to view and/or download the information, such as price or valuation information.

The DOR’s revised guidance generates confusion because the various products or services, whether directly or indirectly involve the transfer of electronic information, could conceivably be construed as additional digital goods subject to the retail sales tax.

What is an MLS?

MLSs were created and continue to facilitate cooperation and compensation among participating real estate brokers.

- Since the late 1800s, REALTORS® have used MLSs and related technologies to facilitate real estate brokerage services and cooperation among brokers. The core of the MLS is facilitation of a private offer of cooperation and compensation by listing real estate brokers (*i.e.*, those representing the seller) to other real estate brokers.
- Most of the information contained in the MLS is available for free to the public. For instance, the lot size, tax assessment, digital parcel mapping, and basic information about the property itself is available through community assessor sites as well as other sites such as <https://www.wihomes.com> and www.realtor.com and many others.

Brokers join MLSs and pay membership dues or fees primarily to extend an offer of cooperation and compensation to other MLS participants.

- Through MLSs, real estate brokers share information on properties they have listed and invite other brokers to cooperate in the sale of such properties in exchange for

¹ Wis. Stat. § 77.51(1a)(a)5.

² Publication 240, Digital Goods, Wisconsin Department of Revenue, November 1, 2021, at page 17.

compensation if the other broker produces the buyer.

- The dissemination of information related to each property is a secondary component of the MLS listing process, the primary function of which is to facilitate the exchange of offers of cooperation and allow the sharing of commissions between brokers.

MLS Fees and Dues are Not Taxable

- **Digital goods incidental to a nontaxable service are not subject to the sales tax if the main purpose of the customer is to obtain the nontaxable service.** In general, a Wisconsin seller does not have to withhold and remit sales taxes upon sales of taxable goods or services if such sales are incidental to the performance of a nontaxable service and each customer's main purpose or objective is to obtain the service rather than to purchase tangible personal property.³ For purposes of this exception, tangible personal property or additional digital goods transferred by a service provider are "incidental" to a nontaxable service "if the purchaser's main purpose or objective is to obtain the service rather than the property. . . even though the property. . . may be necessary or essential to providing the service."⁴
- **MLSs are exempt from the sales tax because the main purpose of the MLS is to facilitate cooperation and compensation among participating real estate brokers.**
 - **Primary purpose** - facilitating private offers of cooperation and commissions by and between participating members of the MLS.
 - **Secondary purpose** - dissemination of information regarding each property incidental to the listing process.
- **Most property information is available to the public.** Again, the primary purpose of a Wisconsin MLS is to facilitate compensation and cooperation, a nontaxable service, not to provide access to an online database or website with price or other information about real estate that users can view or access. MLSs do not charge for or sell real property listing databases or other information and the information is free to the public.
- **Other states recognize MLS fees and dues are not subject to state and local sales taxes due to the primary purpose of facilitating cooperation and compensation among participating brokers.** New York⁵, New Jersey⁶, Virginia⁷ all determined that the MLS was not subject to the sales tax because the primary function of the MLS is to facilitate compensation and cooperation.
- **The state is not currently charging sales tax for the MLS service.** The DOR is not currently charging sales tax for the facilitation of the cooperation and compensation of the MLS and is supportive of the statutory clarification provided in the legislation.

We respectfully request your support for SB 351/AB 353.

³ Wis. Stat. § 77.52(2m).

⁴ Wis. Stat. § 77.51(5). Wis. Admin. Code Tax 11.67.

⁵ New York Advisory Opinion No. TSB-A-97(55)S, New York Department of Taxation and Finance, (September 3, 1997).

⁶ N.J. Admin. Code 18:24-35.5(b), Ex. 1.

⁷ Document No. 92-138, Ruling of the Tax Commissioner, Virginia Department of Taxation, (Aug. 10, 1992), available at: <https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/92-138>. Historically, real estate listings were documented in physical books.