

**WISCONSIN DEPARTMENT OF REVENUE  
DIVISION OF INCOME, SALES, AND EXCISE TAX**

**NOTICE OF PROPOSED GUIDANCE DOCUMENTS**

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance document listed in the table below.

**SUBMITTING PUBLIC COMMENTS**

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

**DEADLINE FOR SUBMISSION**

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

<b>Document Number</b>	<b>Document Title</b>
<b>100195</b>	Remote Sellers - Common Questions

State of Wisconsin  
Department of Revenue

## Remote Sellers Common Questions

**This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats.**

1. What is the effect of the *Wayfair* decision?
2. Who is a remote seller?
3. Are all remote sellers required to register in Wisconsin?
4. What is the date a remote seller is required to be registered in Wisconsin?
5. How do remote sellers register in Wisconsin?
6. How is the small seller exception determined?
7. What is considered a "separate sale transaction" for determining the small seller exception?
8. Is a Wisconsin retailer required to collect tax on sales made into all states if it exceeds Wisconsin's small seller exception sales threshold?
9. Is a remote seller required to register if it does not make any taxable sales in Wisconsin?
10. Is a third-party remote seller required to register if all of its sales are made through a marketplace that is collecting and remitting the tax?
11. Is a marketplace required to register if it only makes sales on behalf of third-party sellers?
12. How are remote sellers that are already registered in Wisconsin affected by the *Wayfair* decision?
13. Are remote sellers liable for tax on all sales into Wisconsin?
14. Is a remote seller liable for tax if it only makes sales of taxable services or taxable digital goods into Wisconsin?
15. Are remote sellers liable for tax on sales into Wisconsin prior to the *Wayfair* decision?
16. Are remote sellers required to collect sales tax on sales made via the Internet?
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  24. Where can remote sellers find information for other states?
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1. **What is the effect of the *Wayfair* decision?**

The effect of the United States Supreme Court's decision in [South Dakota v. Wayfair, Inc.](#), on June 21, 2018, is that an out-of-state seller with no physical presence in Wisconsin (i.e., remote seller) is required to collect and remit Wisconsin sales or use tax on taxable sales in Wisconsin. More details are below.

2. **Who is a remote seller?**

A remote seller is an out-of-state seller that has no physical presence or activities in Wisconsin other than making sales.

3. **Are all remote sellers required to register in Wisconsin?**

All remote sellers are required to be registered to collect and remit Wisconsin sales or use tax beginning on October 1, 2018. New standards for administering sales tax laws for remote sellers have been developed by rule, consistent with [South Dakota v. Wayfair, Inc.](#) The rule provides for a small seller exception for remote sellers who do not have annual sales of products and services into the state of (1) more than \$100,000 or (2) 200 or more separate transactions. Effective December 16, 2018, Wisconsin sales and use tax statutes were amended ([2017 Wis. Act 368](#)) to provide the small seller exception by law, consistent with the Court's decision in *Wayfair* and the rule.

**Note:** The small seller exception does not apply to sellers with a physical presence in Wisconsin.

See the answer to [Question #5](#) for information on registering in Wisconsin and the answer to [Question #6](#) for information on the small seller exception.

4. **What is the date a remote seller is required to register with Wisconsin?**

Wisconsin requires remote sellers to begin collecting sales or use tax on October 1, 2018. To ensure the remote seller's registration is properly processed by October 1, 2018, the remote seller should complete the registration at least three weeks prior to October 1, 2018. The remote seller may indicate a first sales date of October 1, 2018 on the application. A remote seller may register and begin collecting tax at any time prior to October 1, 2018, but the first date of collection should be consistent with the first sales date indicated on its application.

See the answer to [Question #5](#) for information on registering in Wisconsin.

## 5. How do remote sellers register in Wisconsin?

Remote sellers can register to begin collecting and remitting Wisconsin's sales or use taxes through either of the following methods:

- *Register directly with Wisconsin* – To register only for Wisconsin, use [Wisconsin's online registration system](#). See the department's Common Questions for [Sales and Use Tax Permits](#) for additional information.
- *Register through Streamlined Sales Tax* – To register for multiple states, including Wisconsin, submit a single application through the [Streamlined Sales Tax Registration System](#). There is no fee to complete and submit this online registration. Upon completion of the registration, the remote seller will be registered to collect and remit sales and use tax in all 24 Streamlined member states. Additional information is provided on the Streamlined Sales Tax Registration webpage and in the [Streamlined Sales Tax Registration System FAQs](#).

A remote seller may use a Certified Service Provider (CSP) to perform its sales or use tax responsibilities when registering through the Streamlined Sales Tax Registration System. CSPs are certified under the Streamlined Sales and Use Tax Agreement to perform all the remote seller's sales and use tax functions, other than the remote seller's obligation to remit tax on its own purchases. A CSP is designed to allow a business to outsource most of its sales tax administration responsibilities. If a remote seller registers through the [Streamlined Sales Tax Registration System](#) and contracts with a CSP to perform its sales and use tax functions (i.e., CSP Services), the CSP will file monthly sales and use tax returns on behalf of the remote seller. See the [CSP FAQs](#) for more information.

## 6. How is the small seller exception determined?

A small seller exception is provided for remote sellers that have \$100,000 or less in annual gross sales and less than 200 separate sales transactions in Wisconsin in both the previous year and current year. A remote seller that qualifies for the small seller exception is not required to register and collect Wisconsin sales or use tax.

The annual gross sales amount and number of separate transactions include both taxable and nontaxable sales into Wisconsin. In addition, the annual amounts include sales into Wisconsin by the remote seller on behalf of other sellers and sales made by another seller on the remote seller's behalf. The current and previous year is based on the remote seller's taxable year for federal income tax purposes.

The article titled ["Registration and Collection Dates for Remote Sellers"](#) provides examples of when a remote seller qualifies for the small seller exception, along with the date it will need to register and collect Wisconsin sales or use tax if it does not qualify for the small seller exception.

## 7. What is considered a "separate sale transaction" for determining the small seller exception?

Each invoice is considered a "separate sale transaction" for determining the small seller exception. For example, an invoice that has multiple products is considered one separate sale transaction. For leases and licenses, each required periodic payment is a separate sale transaction. A deposit made in advance of a sale is not a sale transaction.

See the answer to [Question #6](#) for additional information about the small seller exception.

## 8. Is a Wisconsin retailer required to collect tax on sales made into all states if it exceeds Wisconsin's small seller exception sales threshold?

Wisconsin's small seller exception only determines whether a remote seller is required to collect tax on sales that it makes into Wisconsin. A Wisconsin retailer's collection requirement in another state is not based on its sales into Wisconsin. However, a Wisconsin retailer should contact each state it makes sales into to determine if the Wisconsin retailer is required to collect that state's tax. Each state's laws and rules are different and applying the U.S. Supreme Court's decision in [South Dakota v. Wayfair, Inc.](#), will vary by state. In addition, the implementation dates may be different for states requiring remote sellers to collect their sales or use tax.

The article titled "[Wayfair Decision - Information for Wisconsin Businesses](#)" provides information on other states, including links to state websites, customer service contact information, registration pages, sales and use tax rates, and taxable/exempt information for each state.

**9. Is a remote seller required to register if it does not make any taxable sales in Wisconsin?**

A remote seller that does not qualify for the small seller exception but only makes nontaxable sales in Wisconsin is not required to register for Wisconsin sales or use tax. For example, a remote seller that is a wholesaler and only sells products for resale, is not required to register for sales or use tax. However, if that wholesaler makes taxable sales to end users (i.e., not for resale), the wholesaler is required to register and collect sales or use tax on such sales, unless an exemption applies (e.g., occasional sales exemption).

**10. Is a third-party remote seller required to register if all of its sales are made through a marketplace that is collecting and remitting the tax?**

A third-party remote seller that does not qualify for the small seller exception is not required to register for Wisconsin sales or use tax if all of the third-party seller's taxable sales are made through a marketplace and the marketplace is collecting and remitting tax on such sales. However, the third-party remote seller is required to register for and collect Wisconsin sales or use tax on its taxable sales in Wisconsin that are not made through a marketplace, as well as taxable sales made through another marketplace that is not collecting and remitting the tax.

**Caution:** In determining if the third-party remote seller qualifies for the small seller exception, the annual gross sales amount and number of transactions include sales into Wisconsin made by the third-party seller, as well as sales made on behalf of the third-party seller by another seller, such as a marketplace. See the answer to [Question #6](#) for additional information about the small seller exception and [Question #11](#) for a marketplace's registration requirement.

**Note:** Effective January 1, 2020, provisions provided in 2019 Wis. Act 10 clarify that a marketplace provider is required to collect and remit sales or use tax for all sales of taxable products and services in Wisconsin that the marketplace provider facilitates on behalf of a marketplace seller. See the department's web page for [Marketplace Providers and Sellers](#) for more information.

**11. Is a marketplace required to register if it only makes sales on behalf of third-party sellers?**

A marketplace that is a remote seller but does not qualify for the small seller exception is required to register and collect Wisconsin sales or use tax on taxable sales made on behalf of third-party sellers. A marketplace that makes sales on behalf of a third-party seller is considered a retailer, as provided in sec. 77.51(13)(c), Wis. Stats., and is liable for tax on Wisconsin sales made by the marketplace on behalf of the third-party seller.

**Caution:** In determining if a marketplace qualifies for the small seller exception, the annual gross sales amount and number of transactions include sales into Wisconsin made by the marketplace on its own behalf or on behalf of other sellers. See the answer to [Question #6](#) for additional information about the small seller exception and [Question #10](#) for a third-party seller's registration requirement.

**Note:** Effective January 1, 2020, provisions provided in 2019 Wis. Act 10 clarify that a marketplace provider is required to collect and remit sales or use tax for all sales of taxable products and services in Wisconsin that the marketplace provider facilitates on behalf of a marketplace seller. See the department's web page for Marketplace Providers and Sellers for more information.

12. **How are remote sellers that are already registered in Wisconsin affected by the Wayfair decision?**

Remote sellers that were registered in Wisconsin prior to the U.S. Supreme Court's decision in [South Dakota v. Wayfair, Inc.](#), are not impacted by this decision and may continue to collect and remit sales and use tax.

**Note:** New standards for administering sales tax laws for remote sellers have been developed by rule, consistent with *South Dakota v. Wayfair, Inc.*, which approved a small seller exception for remote sellers who do not have annual sales of products and services into the state of (1) more than \$100,000 or (2) 200 or more separate transactions. Effective December 16, 2018, Wisconsin sales and use tax statutes were amended ([2017 Wis. Act 368](#)) to provide the small seller exception by law, consistent with the Court's decision in *Wayfair* and the rule. The small seller exception does not apply to sellers with a physical presence in Wisconsin.

See the answer to [Question #6](#) for additional information about the small seller exception

13. **Are remote sellers liable for tax on all sales into Wisconsin?**

Remote sellers are required to collect and remit sales or use tax on all sales of taxable products and services into Wisconsin, unless an exemption applies (e.g., resale). See the department's Common Questions for [What is taxable?](#) and [What is exempt?](#) for additional information.

**Note:** New standards for administering sales tax laws for remote sellers have been developed by rule, consistent with *South Dakota v. Wayfair, Inc.*, which approved a small seller exception for remote sellers who do not have annual sales of products and services into the state of (1) more than \$100,000 or (2) 200 or more separate transactions. Effective December 16, 2018, Wisconsin sales and use tax statutes were amended ([2017 Wis. Act 368](#)) to provide the small seller exception by law, consistent with the Court's decision in *Wayfair* and the rule. See the answer to [Question #6](#) for additional information about the small seller exception.

14. **Is a remote seller liable for tax if it only makes sales of taxable services or taxable digital goods into Wisconsin?**

A remote seller is required to collect and remit Wisconsin sales or use tax on all sales of taxable products and services in Wisconsin if it does not qualify for the small seller exception. Wisconsin sales and use tax is imposed on sales of the following products in Wisconsin:

- Tangible personal property.
- Specified digital goods, additional digital goods, and digital codes
- Taxable services
- Coins and stamps of the United States that are sold, licensed, leased, rented or traded as collector's items, above their face value.

**Example:** Remote Seller only makes sales of digital goods into Wisconsin. Remote Seller does not qualify for the small seller exception because its gross sales in the previous year were more than \$100,000. Remote Seller sells a video game that is transferred electronically (i.e., taxable additional digital good) to a purchaser in Wisconsin. Remote Seller is liable for Wisconsin sales or use tax on its sale of the video game into Wisconsin.

See the answer to [Question #6](#) for additional information about the small seller exception.

**15. Are remote sellers liable for tax on sales into Wisconsin prior to the *Wayfair* decision?**

If a remote seller is required to register based solely on the U.S. Supreme Court's decision in [South Dakota v. Wayfair, Inc.](#), the remote seller is not required to collect and remit sales or use tax on sales that occurred prior to October 1, 2018. A remote seller may voluntarily register and collect sales and use tax at any time prior to October 1, 2018.

**16. Are remote sellers required to collect sales tax on sales made via the Internet?**

Remote sellers are required to collect and remit tax on all taxable sales into Wisconsin, including sales made online. The Internet Tax Freedom Act prohibits Wisconsin from imposing a sales tax on Internet access services, but does not prohibit Wisconsin from taxing sales made via the Internet.

**Note:** New standards for administering sales tax laws for remote sellers have been developed by rule, consistent with *South Dakota v. Wayfair, Inc.*, which approved a small seller exception for remote sellers who do not have annual sales of products and services into the state of (1) more than \$100,000 or (2) 200 or more separate transactions. Effective December 16, 2018, Wisconsin sales and use tax statutes were amended ([2017 Wis. Act 368](#)) to provide the small seller exception by law, consistent with the Court's decision in *Wayfair* and the rule. See the answer to [Question #6](#) for additional information about the small seller exception

**17. How often are remote sellers required to file sales and use tax returns?**

A remote seller's filing frequency (e.g., monthly, quarterly, annually) is based on the information provided with registration. Remote sellers will be notified by the department of their filing frequency based on the annual dollar amount of their taxable sales. The department may review a remote seller's filing frequency on an annual basis and change the filing frequency based on the remote seller's filing history. If the department changes the filing frequency, the remote seller will be notified of the change.

**Note:** If a remote seller registers through the [Streamlined Sales Tax Registration System](#) and contracts with a [Certified Service Provider](#) (CSP) to perform its sales and use tax functions (i.e., CSP Services), the CSP will file monthly sales and use tax returns on behalf of the remote seller.

**18. How do remote sellers file sales and use tax returns?**

Remote sellers may electronically file Wisconsin sales and use tax returns using [My Tax Account](#), the department's online filing and payment system. Remote sellers must register for a username and password prior to filing returns. See the department's [Using My Tax Account – Business Users](#) user guide for additional information.

**Note:** If a remote seller registers through the [Streamlined Sales Tax Registration System](#) and contracts with a [Certified Service Provider](#) (CSP) to perform its sales and use tax functions (i.e., CSP Services), the CSP will file monthly sales and use tax returns on behalf of the remote seller.

**19. Are remote sellers required to collect county and stadium sales and use taxes?**

Remote sellers registered for Wisconsin sales or use taxes must collect the applicable 0.5% county sales and use tax and the 0.1% baseball stadium sales and use tax. See Wisconsin's [Sales Tax Rate Chart](#).

**20. Are remote sellers subject to audits by the department?**

Remote sellers may be subject to an audit, like any other sellers.

**21. What is the effect of the *Wayfair* decision on Wisconsin purchasers?**

Purchasers in Wisconsin may see an increased number of remote sellers that are charging sales and use tax.


As before, if a remote seller does not charge sales tax on a taxable item in Wisconsin, the purchaser should report use tax on the purchase price. An individual may report the use tax on his or her individual income tax return.

**22. Are purchasers required to pay use tax if the remote seller qualifies for the small seller exception?**

The purchaser is responsible for reporting use tax on its purchase price of a taxable item if the remote seller does not charge tax. A remote seller that qualifies for the small seller exception is not required to register and collect Wisconsin sales or use tax on its taxable sales. However, the purchaser is liable for use tax on its purchase of taxable items.

**23. Are there sales and use tax resources available for new registrants?**

The following resources are available on the department's website:

- [Sales and Use Tax Common Questions](#)
-  [Publication 201](#), Wisconsin Sales and Use Tax Information
- [Streamlined Sales Tax website](#)

**24. Where can remote sellers find information for other states?**

The Streamlined Sales Tax Governing Board has developed the following resources for both Streamlined Sales Tax member states and non-member states:



- [State Website and Contact Information](#) – The web page includes links to state websites, customer service contact information, registration pages, sales and use tax rates, and taxable/exempt information for each state.
- [Remote Seller Guidance by State – Chart](#) - The chart provides state specific guidance, including links to state websites, remote seller compliance dates, remote seller thresholds, and links to each state's remote seller guidance web page.

## Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of December 6, 2019: Sections 73.03, 73.16, 77.51, 77.52, 77.523, 77.524, 77.53, 77.54, 77.58, 77.59 and 77.71, Wis. Stats., sec. Tax 11.002, Wis. Adm. Code, 47 U.S. Code § 151 Notes, and South Dakota vs. Wayfair, Inc.

Laws enacted and in effect after December 6, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to December 6, 2019, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

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