

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

|  |                             |
|--|-----------------------------|
| 1. Type of Estimate and Analysis<br><input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected | 2. Date<br>October 15, 2018 |
|--|-----------------------------|

3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)

Chapter Tax 11 – Remote Sellers

4. Subject

Remote Sellers

|  |   |
|--|---|
| 5. Fund Sources Affected<br><input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S | 6. Chapter 20, Stats. Appropriations Affected |
|--|---|

7. Fiscal Effect of Implementing the Rule

|   |  |  |   |
|---|--|--|---|
| <input type="checkbox"/> No Fiscal Effect | <input type="checkbox"/> Increase Existing Revenues            | <input type="checkbox"/> Increase Costs                      | <input type="checkbox"/> Decrease Costs |
| <input type="checkbox"/> Indeterminate    | <input checked="" type="checkbox"/> Decrease Existing Revenues | <input type="checkbox"/> Could Absorb Within Agency's Budget |   |

8. The Rule Will Impact the Following (Check All That Apply)

|  |  |
|--|--|
| <input checked="" type="checkbox"/> State's Economy        | <input type="checkbox"/> Specific Businesses/Sectors                                 |
| <input checked="" type="checkbox"/> Local Government Units | <input type="checkbox"/> Public Utility Rate Payers                                  |
|  | <input type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b> |

9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).

(\$1,100,000)

10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?

Yes     No

11. Policy Problem Addressed by the Rule

The rule codifies the federal limitation on imposing sales and use tax on small, out-of-state retailers consistent with the June 21, 2018, U.S. Supreme Court decision in *Wayfair*.

12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

Wisconsin Taxation Committee (WICPA), Wisconsin Manufacturers and Commerce (WMC), Wisconsin Association of Accountants (WAA), Tax Executives Institute (TEI), Independent Business Association of Wisconsin (IBAW), Wisconsin Independent Businesses (WIB), National Federation of Independent Businesses (NFIB), Council on State Taxation (COST), and National Association of Computerized Tax Processors (NACTP).

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Using data from the US Census Bureau's E-Stats program, sales data for internet retailers, and assuming 77% compliance in the first year of collections, the department estimates the current law potential revenue increase due to *Wayfair* to be \$103.1 million in FY19 from October 1 through end of the fiscal year.

Wisconsin makes up just under two percent of US population and personal income. Based on the distribution of gross sales by size of business for US retailers (NAICS 44-45) and nonstore retailers (NAICS 454) from the 2012 Economic Census and assuming that nationwide sellers with sales exceeding \$5.0 million would potentially have sales of \$100,000 into Wisconsin

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

(\$5.0 million x 2.0%), the department estimates these sellers generate approximately 88% of total sales. An estimated 12% of sales are attributable to sellers with less than \$100,000 of gross sales into Wisconsin.

The department estimates FY19 state sales tax collections due to *Wayfair* to reach \$90.7 million ( $\$103.1 \times 88\%$ ) under the rule, which is a reduction in revenue of about \$12.4 million compared to current law ( $\$103.1 \text{ million} - \$90.7 \text{ million}$ ).

Local sales taxes are estimated to be about 8.6% of state sales taxes. Assuming this percentage does not change, local tax collections will decrease by about \$1.1 million ( $\$12.4 \text{ million} \times 8.6\%$ ) as a result of the rule.

The revenue decrease could be higher/lower to the extent out-of-state retailers disproportionately sell to other states and/or to the extent out-of-state sellers with less than \$100,000 of gross sales into Wisconsin are required to collect due to the number of separate sales transactions into Wisconsin.

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### 15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The rule ensures that an undue burden will not be placed on small businesses located outside Wisconsin.

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### 16. Long Range Implications of Implementing the Rule

No long-range implications are anticipated.

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### 17. Compare With Approaches Being Used by Federal Government

The rule codifies the federal limitation on imposing sales and use tax on small, out-of-state retailers consistent with the *Wayfair* decision.

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### 18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

The department has not found a similar rule in an adjacent state; however, other states have published guidance on how they will implement the *Wayfair* decision.

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|                         |                                 |
|-------------------------|---------------------------------|
| <b>19. Contact Name</b> | <b>20. Contact Phone Number</b> |
| Jen Chadwick            | 608-266-8253                    |

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes     No
-

**FISCAL ESTIMATE FORM**

**2018 Session**

- ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

**LRB #**  
**INTRODUCTION #**  
**Admin. Rule # TAX 11.97**

**Subject**

This rule repeals and recreates Tax 11.97 relating to sales and use tax provisions for out-of-state retailers.

**Fiscal Effect**

- State:**  No State Fiscal Effect  
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation
- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues            | <input type="checkbox"/> Increase Costs - May be Possible to Absorb<br>Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Decrease Existing Appropriation | <input checked="" type="checkbox"/> Decrease Existing Revenues |  |
| <input type="checkbox"/> Create New Appropriation        | <input type="checkbox"/> Decrease Costs                        |  |

**Local:**

No Local Government Costs

- |  |   |  |
|--|---|--|
| 1. <input type="checkbox"/> Increase Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory                       | 5. Types of Local Governmental Units Affected:<br><input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities<br><input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others <u>Baseball District</u><br><input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts |
| 2. <input type="checkbox"/> Decrease Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input checked="" type="checkbox"/> Decrease Revenues<br><input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory |  |

**Fund Sources Affected**

- GPR    FED    PRO    PRS    SEG    SEG-S

**Affected Ch. 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate:**

The rule codifies the federal limitation on imposing sales and use tax on small, out-of-state retailers consistent with the June 21, 2018, U.S. Supreme Court decision in *Wayfair*.

The exception applies to sellers that meet both of the following conditions:

1. The retailer's annual gross sales into Wisconsin are \$100,000 or less
2. The retailer's annual number of separate sales transactions in to Wisconsin are less than 200

Using data from the US Census Bureau's E-Stats program, sales data for internet retailers, and assuming 77% compliance in the first year of collections, the department estimates the current law potential revenue increase due to *Wayfair* to be \$103.1 million in FY19 from October 1 through end of the fiscal year.

Wisconsin makes up just under two percent of US population and personal income. Based on the distribution of gross sales by size of business for US retailers (NAICS 44-45) and nonstore retailers (NAICS 454) from the 2012 Economic Census and assuming that nationwide sellers with sales exceeding \$5.0 million would potentially have sales of \$100,000 into Wisconsin (\$5.0 million x 2.0%), the department estimates these sellers generate approximately 88% of total sales. An estimated 12% of sales are attributable to sellers with less than \$100,000 of gross sales into Wisconsin.

The department estimates FY19 state sales tax collections due to *Wayfair* to reach \$90.7 million (\$103.1 \* 88%) under the rule, which is a reduction in revenue of about \$12.4 million compared to current law (\$103.1 million - \$90.7 million).

Local sales taxes are estimated to be about 8.6% of state sales taxes. Assuming this percentage does not change, local tax collections will decrease by about \$1.1 million (\$12.4 million \* 8.6%) as a result of the rule.

The revenue decrease could be higher/lower to the extent out-of-state retailers disproportionately sell to other states and/or to the extent out-of-state sellers with less than \$100,000 of gross sales into Wisconsin are required to collect due to the number of separate sales transactions into Wisconsin.

**Long-Range Fiscal Implications:**

|  |   |                         |
|--|---|-------------------------|
| <b>Agency/Prepared by:</b><br>Wisconsin Department of Revenue<br>Travis Arthur<br>(608) 266-8565 | <b>Authorized Signature/Telephone No.</b><br>Wisconsin Department of Revenue<br>Jamie Adams<br>(608) 266-6785 | <b>Date</b><br>8-9-2018 |
|--|---|-------------------------|

**FISCAL ESTIMATE WORKSHEET**

Detailed Estimate of Annual Fiscal Effect

**2018 Session**

- ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

|                       |                      |
|-----------------------|----------------------|
| <b>LRB #</b>          | <b>Admin. Rule #</b> |
| <b>INTRODUCTION #</b> | <b>TAX 11.97</b>     |

**Subject**

This rule repeals and recreates Tax 11.97 relating to sales and use tax provisions for out-of-state retailers.

**I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

| II. Annualized Costs:   | Annualized Fiscal impact on State funds from: |                      |
|---|---|----------------------|
| A. State Costs by Category  | Increased Costs                               | Decreased Costs      |
| State Operations – Salaries and Fringe  | \$  | \$ -                 |
| (FTE Position Changes)  | ( FTE)  | (- FTE)              |
| State Operations-Other Costs  |   | -                    |
| Local Assistance  |   | -                    |
| Aids to Individuals or Organizations  |   | -                    |
| <b>TOTAL State Costs by Category</b>  | <b>\$</b>                                     | <b>\$ -</b>          |
| B. State Costs by Source of Funds   | Increased Costs                               | Decreased Costs      |
| GPR   | \$  | \$ -                 |
| FED   |   | -                    |
| PRO/PRS   |   | -                    |
| SEG/SEG-S   | \$  | -                    |
| III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.) | Increased Rev.                                | Decreased Rev.       |
| GPR Taxes   | \$  | \$ - 12,400,000      |
| GPR Earned  |   | -                    |
| FED   |   | -                    |
| PRO/PRS   |   | -                    |
| SEG/SEG-S   |   | -                    |
| <b>TOTAL State Revenues</b>   | <b>\$</b>                                     | <b>\$ -1,100,000</b> |

**NET ANNUALIZED FISCAL IMPACT**

|                        | <u>STATE</u>   | <u>LOCAL</u>  |
|------------------------|----------------|---------------|
| NET CHANGE IN COSTS    | \$ 0           | \$ 0          |
| NET CHANGE IN REVENUES | \$ -12,400,000 | \$ -1,100,000 |

|  |   |                         |
|--|---|-------------------------|
| <b>Agency/Prepared by:</b><br>Wisconsin Department of Revenue<br>Travis Arthur<br>(608) 266-8565 | <b>Authorized Signature/Telephone No.</b><br>Wisconsin Department of Revenue<br>Jamie Adams<br>(608) 266-6785 | <b>Date</b><br>8-9-2018 |
|--|---|-------------------------|