

# STATEMENT OF SCOPE

## Department of Revenue

**Rule No.:** Section Tax 11.97

**Relating to:** Sales and use tax provisions

**Rule Type:** Permanent

This scope statement was approved by the Governor on January 30, 2019.

### **1. Detailed description of the objective of the proposed rule:**

The objective of the rule is to repeal guidance for out-of-state sellers without a physical presence in Wisconsin (remote sellers) making Wisconsin sales, consistent with the June 21, 2018, U.S. Supreme Court decision in *South Dakota v. Wayfair, Inc. (Wayfair)* and enactment of 2017 Wisconsin Act 368, effective December 16, 2018. Wisconsin began collecting sales tax from out-of-state sellers making sales into Wisconsin on October 1, 2018, and an emergency rule provided guidance for a small seller exception, effective on the same day. This rule is being promulgated to repeal s. Tax 11.97 as a result of the recent court decision and law changes.

### **2. Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

Previously, an out-of-state seller was not required to collect Wisconsin sales or use taxes unless the seller had a physical presence in Wisconsin based on prior U.S. Supreme Court decisions (*Quill Corp. v. North Dakota* and *National Bellas Hess, Inc. v. Department of Revenue of Ill.*). *Wayfair* overruled these decisions. New standards to enforce sales tax laws on remote sellers were developed in 2017 Wisconsin Act 368, which approved a small seller exception for remote sellers who do not have annual sales of products and services into the state of more than \$100,000 or 200 or more separate transactions. As a result, s. Tax 11.97 is superseded by the new state law and U.S. Supreme Court decision.

### **3. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Section 227.11 (2), Stats., provides statutory rule-making authority as follows:

- (a) "Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute..."
- (b) "Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules ..."

Section 77.52 (1) and (2), Stats., provides the authority to impose a sales tax on retailers for the privilege of selling, licensing, leasing, or renting at retail tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services.

Section 77.53 (3), Stats., provides the authority to impose a use tax on retailers engaged in business in this state on sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services.

Sections 77.51 (13) and (13g), Stats., define "retailer" and "retailer engaged in business in this state." Section 77.51 (13g) (c), Stats., provides that "retailer engaged in business in this state" includes any retailer making sales of taxable products and services "unless otherwise limited by federal law." Section 77.51 (13gm) provides that a "retailer engaged in business in this state" does not include those who fall under the small seller exception.

**4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

The department estimates it will take minimal time to repeal the rule.

**5. List with description of all entities that may be affected by the proposed rule:**

Repealing s. Tax 11.97 will have no effect as the court decision and current law supersedes this guidance.

**6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

Although there is no existing or proposed federal regulation that is intended to address the activities regulated by the rule, *Wayfair* provides guidance that supersedes the guidance provided by the current rule in effect prior to the emergency rule.

**7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

There is no anticipated economic impact as the court decision and current law supersede the current guidance provided in s. Tax 11.97 in effect prior to the emergency rule.

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