

**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 documents 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.

| Document Number | Document Title |
|------------------------|--|
| 100223 | Marketplace Providers and Sellers – Landing Page |
| 100224 | Marketplace Provider and Seller – Common Questions |

State of Wisconsin
Department of Revenue

Marketplace Providers and Sellers – Provisions That Take Effect on January 1, 2020

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.

2019 Wis. Act 10 clarifies 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, as provided in secs. 77.52(3m)(a) and 77.523(1), Wis. Stats.

The Act also reverses the effect of the decision in *Orbitz, LLC vs. Wisconsin Department of Revenue*, (Wisconsin Court of Appeals, District IV, February 11, 2016) by requiring marketplace providers that facilitate sales of all services under sec. 77.52(2), Wis. Stats., including lodging services, to collect and remit sales or use tax on the entire amount charged to a purchaser, as provided in sec. 77.52(3m)(a), Wis. Stats.

Note: For sales made prior to January 1, 2020, both the marketplace and third-party seller may be liable on taxable sales. See [article](#) for additional information.

Resources

[2019 Wis. Act 10](#)

[Remote Sellers - Wayfair Decision](#)

Registering for sales and use tax

- [Wisconsin's online registration system](#)
- [Streamlined Sales Tax Registration System](#)

[Streamlined Sales Tax website](#)


- [Registering through the Streamlined Sales Tax Registration System](#)
- [Certified Service Providers FAQs](#)

Common Questions

Marketplace Provider Common Questions

- [Who is a marketplace provider?](#)
- [When is a marketplace provider required to collect and remit tax?](#)
- [Are all marketplace providers required to collect and remit tax?](#)
- [How do marketplace providers register to collect and remit tax in Wisconsin?](#)
- [Does a marketplace provider file separate sales tax returns for each marketplace seller?](#)

- Other state's sales tax, registration, and contact information (including non-member states).

 [Publication 201, Wisconsin Sales and Use Tax Information](#)

Sales and use tax common questions

- What is taxable?
- What is exempt?
- How do I report my sales or use tax?
- What is the sales tax rate?
- Lodging marketplace license

- Is a marketplace provider required to notify marketplace sellers that it is collecting and remitting tax?

More questions...

Marketplace Seller Common Questions

- Who is a marketplace seller?
- Is a marketplace seller required to register if all sales are made through a marketplace provider?
- Is a marketplace seller liable for the tax on sales facilitated by a marketplace provider?
- If a marketplace provider does not notify the marketplace seller that it is collecting and remitting, is the marketplace seller liable for the tax?
- How does a marketplace seller report its sales if it makes Wisconsin sales on its own and through a marketplace provider?
- Is the marketplace seller required to maintain exemption certificates for sales made through the marketplace provider?

More questions...

Guidance Document Certification: <https://www.revenue.wi.gov/Pages/Certification-Statement.aspx>

Guidance Document Number: 100223

September 24, 2019

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State of Wisconsin
Department of Revenue

Marketplace Provider and Seller 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.

Marketplace Provider Common Questions

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1. **Who is a marketplace provider?**

Marketplace provider, as defined in sec. 77.51(7i), Wis. Stats., means any person who facilitates a retail sale by a seller by listing or advertising for sale by the seller, in any manner, tangible personal property, or items, property, or goods under sec. 77.52(1)(b), (c), or (d), Wis. Stats., or a service specified under sec. 77.52(2)(a), Wis. Stats., and, who directly or indirectly, through agreements or arrangements with third parties, processes the payment from the purchaser for the retail sale, regardless of whether the person receives compensation or other consideration in exchange for the services provided by the person.

2. **When is a marketplace provider required to collect and remit tax?**

Prior to 2019 Wis. Act 10 taking effect, Wisconsin law provides that a marketplace that sells taxable products on behalf of a third-party seller is liable for Wisconsin sales or use tax on its Wisconsin sales. A marketplace is considered a retailer, as provided in sec. 77.51(13)(c), Wis. Stats., and liable for sales and use tax on taxable sales, unless the marketplace can show the tax was remitted by the third-party seller. The article titled "Online Marketplace Sellers Are Liable for Wisconsin Tax on Third-Party Sales" provides additional information.

The law change that takes effect on January 1, 2020 ([2019 Wis. Act 10](#)), clarifies that a marketplace provider is required to collect and remit Wisconsin sales or use tax on all sales of taxable products and services that the marketplace provider facilitates on behalf of a marketplace seller, as provided in secs. 77.52(3m)(a) and 77.523(1), Wis. Stats.

Note: A marketplace provider with no physical presence in Wisconsin (i.e., remote seller) is required to collect and remit Wisconsin sales or use tax on taxable sales made on behalf of a third-party seller on and after October 1, 2018, unless it qualifies for the small seller exception in sec. 77.51(13gm), Wis. Stats. See [Remote Sellers – Wayfair Decision](#) for additional information.

3. Are all marketplace providers required to collect and remit tax?

All marketplace providers are required to collect and remit Wisconsin sales or use tax on all sales of taxable products and services in Wisconsin that are facilitated on behalf of marketplace sellers, as provided in sec. 77.523(1), Wis. Stats., unless the marketplace provider has been granted a waiver under sec. 77.52(3m)(b) or (c), Wis. Stats.

See the answer to [Question #9](#) for information on waivers for marketplace providers.

4. How do marketplace providers register to collect and remit tax in Wisconsin?

Marketplace providers can register to collect and remit Wisconsin's sales or use taxes through either of the following methods:

- Register directly with Wisconsin Department of Revenue – 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 marketplace provider will be registered to collect and remit sales and use tax in all 24 Streamlined member states, or the marketplace provider can pick and choose which of the member states it needs to be registered. Additional information is provided on the [Streamlined Sales Tax Registration](#) webpage and in the [Streamlined Sales Tax Registration System FAQs](#).

A marketplace provider 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 marketplace provider's sales tax functions, other than the marketplace provider'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 marketplace provider. See the [CSP FAQs](#) for more information.

5. Does a marketplace provider file separate sales tax returns for each marketplace seller?

No. A marketplace provider reports its sales, and the sales made on behalf of all of its marketplace sellers, on its own sales tax return.

6. Is a marketplace provider required to notify marketplace sellers that it is collecting and remitting tax?

A marketplace provider is required to notify the marketplace seller that it is collecting and remitting Wisconsin sales or use tax, as provided in sec. 77.523(2), Wis. Stats. Wisconsin law does not prescribe a form or method required to provide such notification. However, the notification to the marketplace seller must indicate that the marketplace provider is collecting and remitting Wisconsin sales and use tax on all taxable sales in Wisconsin.

7. Is a marketplace provider required to maintain exemption certificates?

A marketplace provider is required to obtain and maintain fully completed exemption certificates (S-211E, Form S-211, or Form S-211-SST) from purchasers claiming an exemption from Wisconsin sales or use tax for sales facilitated on behalf of a marketplace seller (sec. 77.52(14)(c), Wis. Stats.). The marketplace provider is also required to obtain and maintain exemption certificates when the marketplace provider is making sales in Wisconsin on its own behalf to purchasers claiming an exemption.

8. Can a marketplace provider claim a bad debt deduction on a sale facilitated on behalf of a marketplace seller?

A marketplace provider is allowed to claim a bad debt deduction on a sales transaction if it collects and remits Wisconsin sales or use tax on behalf of the marketplace seller, and either the marketplace provider or marketplace seller is eligible to claim the deduction under section 166 of the Internal Revenue Code for the worthless amount of the transaction (sec. 77.585(1g), Wis. Stats.). A marketplace provider shall claim the bad debt deduction on its Wisconsin sales and use tax return for the period in which the marketplace provider or marketplace seller writes off the amount as uncollectible in its books and records and such amount is eligible to be deducted as a bad debt for federal income tax purposes.

Note: If a marketplace provider claims a bad debt deduction on a transaction, the marketplace seller may not claim the bad debt deduction on that same transaction. See the answer to [Question #23](#) for information on a bad debt deduction for marketplace sellers.

9. If a marketplace provider charges additional fees for facilitating a sale, what amount is subject to tax?

A marketplace provider is required to collect and remit Wisconsin sales and use tax on the entire amount charged to a purchaser, including any amount charged by the marketplace provider for facilitating the sale, as provided in sec. 77.52(3m)(a), Wis. Stats.

10. Are marketplace providers required to collect and remit tax on sales of lodging services?

A marketplace provider is required to collect and remit Wisconsin sales and use tax on all sales of taxable products and services, including sales of lodging services that it facilitates on behalf of a marketplace seller, unless the marketplace provider has been granted a waiver from collecting and remitting the tax by the department.

2019 Wis. Act 10 reverses the effect of the decision in *Orbitz, LLC vs. Wisconsin Department of Revenue*, (Wisconsin Court of Appeals, District IV, February 11, 2016) and requires marketplace providers that sell lodging services to collect and remit sales or use tax on the entire amount charged to a purchaser, including any amount charged by the marketplace provider for facilitating the sale, as provided in sec. 77.52(3m)(a), Wis. Stats.

Note: A marketplace provider that facilitates sales of lodging services may also be liable for certain taxes related to lodging services, including premier resort area taxes, local exposition taxes, and municipal room taxes. See the answer to [Question #14](#) for additional information.

11. Can a marketplace provider request a waiver from collecting and remitting tax?

A marketplace provider may submit an application ([Form S-102](#)) to the department requesting a waiver from collecting and remitting Wisconsin sales or use tax if its only activities are facilitating sales of products or services on behalf of marketplace sellers that are operating under a hotel, motel, or restaurant brand name shared with the marketplace provider, as provided in sec. 77.52(3m)(b), Wis. Stats. The waiver may be granted if the department is satisfied that the marketplace seller will collect and remit the tax on the entire amount charged to the purchaser.

Note: The department may grant waivers to other types of marketplace providers, as provided in sec. 77.52(3m)(c), Wis. Stats., if there is evidence that the marketplace seller will reliably collect and remit the tax to the department.

The application must identify the name and address of all marketplace sellers that the marketplace provider is requesting the waiver, along with each marketplace seller's Wisconsin sales or use tax permit number and any other information necessary to ensure the entire amount of tax will be collected and remitted by the marketplace seller. The department can require the marketplace provider to resubmit updated information at any time and if requested, the marketplace provider has 60 days from the written notice to supply the requested information.

If a waiver is granted, each marketplace seller will be notified by the marketplace provider and/or the department that the marketplace provider has been granted a waiver from collecting and remitting Wisconsin sales or use tax by the department. The notification will identify the marketplace provider that has been granted the waiver and it will indicate that the marketplace seller is liable for the tax on the entire sales price charged to the purchaser for taxable products and services in Wisconsin through that marketplace provider.

12. Is there an exception if the marketplace provider only has a distribution facility in Wisconsin?

[2019 Wis. Act 10](#) repeals the exception in the law under sec. 77.51(13b), Wis. Stats., that certain retailers are not required to collect Wisconsin sales or use tax on sales made on behalf of third-party sellers if the retailer or one of its affiliates operates a distribution facility and has no locations (i.e., storefront) in which customers take possession of products. Additional information on the exception is provided in the [July 2015 Special Edition](#) of the *Wisconsin Sales and Use Tax Report*.

13. Can a marketplace provider be audited for sales facilitated on behalf of a marketplace seller?

Only the marketplace provider can be audited and held liable for Wisconsin sale or use tax on sales facilitated on behalf of a marketplace seller, unless (1) the marketplace provider has been granted a waiver from collecting and remitting the tax by the department, or (2) the marketplace provider can demonstrate that the error in collecting and remitting the tax is due to insufficient or incorrect information provided by the marketplace seller.

14. **Can a marketplace provider that is a remote seller qualify for the small seller exception?**

A marketplace provider with no physical presence in Wisconsin (i.e., remote seller) that makes or facilitates sales of taxable products and services in Wisconsin is required to register and collect Wisconsin sales or use tax unless it qualifies for the small seller exception in sec. 77.51(13gm), Wis. Stats. In determining if a marketplace provider 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 [Remote Sellers – Wayfair Decision](#) for additional information.

15. **Is the marketplace provider required to collect and remit the tax if a marketplace seller is a remote seller that qualifies for the small seller exception?**

A marketplace provider is required to collect and remit Wisconsin sales or use tax on sales of taxable products and services that it facilitates on behalf of a marketplace seller, regardless of whether the marketplace seller is a remote seller (i.e., has no physical presence in Wisconsin) that qualifies for the small seller exception.

16. **Are marketplace providers required to collect county and stadium sales and use taxes?**

Marketplace providers must collect the applicable 0.5% county sales and use tax and the 0.1% baseball stadium sales and use tax, in addition to the 5.0% Wisconsin state tax. See [Wisconsin's Sales Tax Rate Chart](#).

A marketplace provider may also be required to collect the following taxes administered by the department:

- Premier Resort Area Taxes – [Publication 403](#)
- Local Exposition Taxes – [Publication 410](#)
- State Rental Vehicle Fee – See Part 11.C. of [Publication 202](#), Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs

Note: A marketplace provider that sells lodging services in Wisconsin may be liable for room taxes imposed by a Wisconsin municipality. The marketplace provider should contact each Wisconsin municipality in which it sells lodging services to determine if additional registration is required, the applicable room tax rate, and how to file and pay the room taxes.

17. **Can a marketplace provider claim the retailer's discount on taxable sales made on behalf of a marketplace seller?**

A marketplace provider that is collecting and remitting Wisconsin sales or use tax is allowed the Wisconsin's retailer's discount, as provided in sec. 77.61(4)(c), Wis. Stats. In order to claim the retailer's discount, the return for the reporting period must be timely filed and paid by the marketplace provider. See the department's Common Questions for [Retailer's Discount](#).

18. **What is the effect on Wisconsin purchasers?**

The law has not changed with regards to purchasers. Purchasers owe use tax on the storage, use, or consumption of taxable products and services in Wisconsin, unless they can show an invoice from the seller with Wisconsin taxes properly collected and paid. As a result of 2019 Wis. Act 10, purchasers in Wisconsin may see an increased number of invoices from marketplace providers showing charges for Wisconsin sales and use tax.

19. Who is a marketplace seller?

Marketplace seller, as defined in sec. 77.51(7j), Wis. Stats., means a seller who sells products through a physical or electronic marketplace operated by a marketplace provider, regardless of whether the seller is required to be registered with the department.

20. Is a marketplace seller required to register if all sales are made through a marketplace provider?

A marketplace seller is not required to register for Wisconsin sales or use tax if all of the marketplace seller's taxable sales in Wisconsin are facilitated by a marketplace provider. However, the marketplace 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 provider.

21. Is a marketplace seller liable for the tax on sales facilitated by a marketplace provider?

A marketplace seller is not liable for Wisconsin sales or use tax for sales in Wisconsin that are facilitated by a marketplace provider, unless (1) the marketplace provider has been granted a waiver from collecting and remitting by the department, or (2) the marketplace provider can demonstrate that any error in collecting and remitting the tax is due to insufficient or incorrect information provided by the marketplace seller.

22. If a marketplace provider does not notify the marketplace seller that it is collecting and remitting, is the marketplace seller liable for the tax?

A marketplace provider is required to notify the marketplace seller that the marketplace provider is collecting and remitting Wisconsin sales or use tax on all taxable sales, as provided in sec. 77.523(2), Wis. Stats. The marketplace provider is required to collect and remit sales or use tax on all taxable sales in Wisconsin that it facilitates on behalf of a marketplace seller and only the marketplace provider can be audited and held liable for the tax. If the marketplace provider does not notify the marketplace seller, the marketplace seller is not liable for the tax unless one of the exceptions below applies.

Exceptions: The marketplace seller is liable for tax on taxable sales facilitated by a marketplace provider if (1) the marketplace provider has been granted a waiver from collecting and remitting by the department, or (2) the marketplace provider can demonstrate that the error in collecting and remitting the tax is due to insufficient or incorrect information provided by the marketplace seller.

23. How does a marketplace seller report its sales if it makes Wisconsin sales on its own and through a marketplace provider?

The marketplace seller reports all of its sales, including sales facilitated on its behalf by a marketplace provider, on Line 1, "Total Sales," of the marketplace seller's Wisconsin Sales and Use Tax Return ([Form ST-12](#)). The marketplace seller then takes a subtraction on Line 5, "Other," for the sales amounts that are made through the marketplace provider.

Caution: If the marketplace provider has been granted a waiver from collecting and remitting Wisconsin sales or use tax by the department, the marketplace seller is required to collect and remit the tax on its taxable sales in Wisconsin. In this case, the marketplace seller includes the sales facilitated by the marketplace provider in its total sales on Line 1, but does not take a subtraction amount on Line 5, "Other."

24. Is the marketplace seller required to maintain exemption certificates for sales made through the marketplace provider?

The marketplace seller is not required to maintain exemption certificates for sales that are made through the marketplace provider. The marketplace provider is required to obtain and maintain all exemption certificates from purchasers claiming an exemption from Wisconsin sales and use tax, as provided in sec. 77.52(14)(c), Wis. Stats. However, the marketplace seller is required to obtain and maintain exemption certificates from purchasers claiming an exemption on its sales that are not made through a marketplace provider, and on sales made through a marketplace provider that has been granted a waiver from collecting and remitting the tax by the department.

See the answer to [Question #6](#) for a marketplace provider's requirements for exemption certificates.

25. Can a marketplace seller be audited for sales transactions that are facilitated by a marketplace provider?

Only the marketplace provider can be audited and held liable for Wisconsin sale or use tax on sales facilitated on behalf of a marketplace seller, unless (1) the marketplace provider has been granted a waiver from collecting and remitting the tax by the department, or (2) the marketplace provider can demonstrate that the error in collecting and remitting the tax is due to insufficient or incorrect information provided by the marketplace seller.

26. Can a marketplace seller claim a bad debt deduction on a sale facilitated by a marketplace provider?

If a marketplace provider collects and remits Wisconsin sales or use tax on behalf of a marketplace seller, the marketplace provider is allowed to claim a bad debt deduction on the sales transaction if either the marketplace provider or marketplace seller is eligible to claim a deduction under section 166 of the Internal Revenue Code for the worthless amount of the transaction (sec. 77.585(1g), Wis. Stats.). A marketplace seller cannot claim a bad debt deduction for the same transaction.

See the answer to [Question #7](#) for additional information on bad debt deductions.

27. Will a marketplace seller be notified if a marketplace provider is granted a waiver from collecting and remitting the tax?

A marketplace seller will be notified by the marketplace provider and/or the department that the marketplace provider has been granted a waiver from collecting and remitting Wisconsin sales or use tax by the department. The notification will identify the marketplace provider that has been granted the waiver and it will indicate that the marketplace seller is liable for the tax on the entire sales price charged to the purchaser for taxable products and services in Wisconsin through that marketplace provider.

28. If a marketplace provider is granted a waiver from collecting and remitting the tax, is the marketplace seller required to collect and remit?

If a marketplace provider has been granted a waiver from collecting and remitting Wisconsin sales or use tax by the department, the marketplace seller is required to collect and remit the tax on the entire sales price charged to the purchaser for taxable sales made in Wisconsin through that marketplace provider.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of September 24, 2019: Subchapter III of Ch. 77, Wis. Stats.

Laws enacted and in effect after September 24, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to September 24, 2019, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

FOR QUESTIONS OR COMMENTS CONTACT:

MS 5-77

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