



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBs0280/2
MES/JK/EVM:all

**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO ASSEMBLY BILL 683**

February 17, 2020 - Offered by Representative KITCHENS.

1 **AN ACT** *to repeal* 66.0615 (1) (bs) and 66.0615 (5); *to renumber and amend*
2 59.25 (3) (e); *to amend* 66.0615 (1) (de), 66.0615 (1) (dk), 66.0615 (1m) (a),
3 66.0615 (1m) (g), 66.0615 (2) (intro.), 66.0615 (2) (a), 66.0615 (2) (b), 66.0615 (2)
4 (e), 66.0615 (3), 66.0615 (4) (a) (intro.) and 66.1014 (2) (d) 1.; and *to create* 59.25
5 (3) (e) 1., 59.25 (3) (e) 2., 66.0615 (1) (bt), 66.0615 (1) (bu), 66.0615 (1r), 66.0615
6 (2m), 66.0615 (4) (a) 4., 66.0615 (4) (d) and 66.1014 (1) (c) of the statutes;
7 **relating to:** expanding applicability of the room tax, making substantive and
8 technical changes to the local room tax, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill expands the applicability of the room tax, makes a number of substantive and technical changes to the local room tax in the areas of collections, audits, and the exchange of information between local governments and the Department of Revenue, establishes a common tax base between the sales tax and the room tax, and authorizes a municipality (city, village, or town) to impose a forfeiture on a marketplace provider (a person who facilitates a retail sale by a seller by listing or advertising, to the extent that the marketplace provider facilitates the

sale or furnishing of rooms, lodging, or other accommodations to transients) that does not timely file a required room tax return to the municipality or pay the required tax. The forfeiture may not exceed 25 percent of the room tax due for the previous year or \$5,000, whichever is less.

Currently, the room tax may be imposed by a municipality or a local exposition district on the privilege of furnishing rooms or lodging to transients by hotelkeepers, motel operators, lodging marketplaces, and other persons who furnish such accommodations. Under the bill, the room tax may be imposed by a municipality or district on the sales price from selling or furnishing rooms or lodging to transients by hotelkeepers, motel operators, and others. 2019 Wisconsin Act 10 in effect requires lodging marketplaces to collect and remit sales taxes from third parties.

Under this bill, for transactions that occur through a marketplace provider, the marketplace provider generally collects any room tax due from a marketplace seller (a seller who sells products through a physical or electronic marketplace operated by a marketplace provider), and forwards it to the municipality on a quarterly basis, along with a form prepared by DOR. The form prepared by DOR must include the total sales for properties located in a municipality with a room tax, the total number of nights such properties were rented, the room tax rate, and the total tax collected. Annually, beginning before July 31, 2020, DOR is required to post on its website the name of each municipality that imposes a room tax, and the rate of each room tax.

Under current law and the bill, to enforce the collection of a room tax imposed by a municipality or district, if such entities have probable cause to believe that the correct amount of room tax has not been assessed or that a room tax return is incorrect, they may inspect and audit the financial records of any person subject to the room tax. Under current law, a person who fails to comply with a request to inspect and audit such records is subject to a forfeiture not exceeding 5 percent of the room tax imposed or 5 percent of what the municipality or district determines the room tax should be, according to its best judgment. Under the bill, this same forfeiture may be imposed on a marketplace provider if the municipality or district has made three requests to inspect and audit the requested records and the marketplace provider fails to respond or comply with the request.

The technical changes made by the bill include the following:

1. Requires counties to provide DOR with the complete county tax roll.
2. Applies to the room tax a number of definitions that currently apply to the general sales and use tax.
3. Authorizes a municipality or district performing an audit related to the room tax to conduct joint audits with other such entities and to exchange audit information with DOR and any municipality that took part in the joint audit.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 59.25 (3) (e) of the statutes is renumbered 59.25 (3) (e) (intro.) and
2 amended to read:

3 59.25 (3) (e) (intro.) Annually by March 15, furnish to the department of
4 revenue ~~the completed tax roll settlement sheets prescribed under s. 70.09 (3).~~ all of
5 the following:

6 **SECTION 2.** 59.25 (3) (e) 1. of the statutes is created to read:

7 59.25 (3) (e) 1. The completed tax roll settlement sheets prescribed under s.
8 70.09 (3).

9 **SECTION 3.** 59.25 (3) (e) 2. of the statutes is created to read:

10 59.25 (3) (e) 2. The complete county tax roll, as that term is used in s. 70.65,
11 in a form and manner prescribed by the department.

12 **SECTION 4.** 66.0615 (1) (bs) of the statutes is repealed.

13 **SECTION 5.** 66.0615 (1) (bt) of the statutes is created to read:

14 66.0615 (1) (bt) “Marketplace provider” has the meaning given in s. 77.51 (7i),
15 to the extent that the marketplace provider facilitates the sale or furnishing of
16 rooms, lodging, or other accommodations to transients under sub. (1m) (a).

17 **SECTION 6.** 66.0615 (1) (bu) of the statutes is created to read:

18 66.0615 (1) (bu) “Marketplace seller” has the meaning given in s. 77.51 (7j).

19 **SECTION 7.** 66.0615 (1) (de) of the statutes is amended to read:

20 66.0615 (1) (de) “Occupant” means a person who rents a short-term rental
21 through a lodging marketplace provider.

22 **SECTION 8.** 66.0615 (1) (dk) of the statutes is amended to read:

23 66.0615 (1) (dk) “Short-term rental” means a residential dwelling that is
24 offered for rent for a fee and for fewer than ~~29~~ 30 consecutive days.

25 **SECTION 9.** 66.0615 (1m) (a) of the statutes is amended to read:

1 66.0615 **(1m)** (a) The governing body of a municipality may enact an ordinance,
2 and a district, under par. (e), may adopt a resolution, imposing a tax on the ~~privilege~~
3 ~~of sales price from selling or furnishing~~, at retail, except sales for resale, rooms or
4 lodging to transients by hotelkeepers, motel operators, ~~lodging marketplaces,~~
5 ~~marketplace providers~~, owners of short-term rentals, and other persons ~~or retailers~~
6 ~~selling or~~ furnishing accommodations that are available to the public, irrespective
7 of whether membership is required for use of the accommodations. A tax imposed
8 under this paragraph may be collected from the consumer or user, but may not be
9 imposed on sales to the federal government and persons listed under s. 77.54 (9a).
10 A tax imposed under this paragraph by a municipality shall be paid to the
11 municipality and, with regard to any tax revenue that may not be retained by the
12 municipality, shall be forwarded by the municipality to a tourism entity or a
13 commission if one is created under par. (c), as provided in par. (d). Except as provided
14 in par. (am), a tax imposed under this paragraph by a municipality may not exceed
15 8 percent of the sales price. Except as provided in par. (am), if a tax greater than 8
16 percent of the sales price under this paragraph is in effect on May 13, 1994, the
17 municipality imposing the tax shall reduce the tax to 8 percent, effective on
18 June 1, 1994.

19 **SECTION 10.** 66.0615 (1m) (g) of the statutes, as created by 2019 Wisconsin Act
20 10, is amended to read:

21 66.0615 **(1m)** (g) Sections 77.51 (10), (12m), (13), (13g), (14), (14g), (15a), (15b),
22 and (17), 77.52 (3), (3m) and, (13), (14), (18), and (19), 77.522, 77.523, 77.53 (7), 77.54,
23 77.58 (6m), and 77.585, as they apply to the taxes under subch. III of ch. 77, shall
24 apply to the tax imposed under par. (a) by a municipality.

25 **SECTION 11.** 66.0615 (1r) of the statutes is created to read:

1 66.0615 (1r) (a) A marketplace provider shall collect the tax imposed by a
2 municipality under sub. (1m) for a marketplace seller, unless the marketplace
3 provider has been issued a waiver under s. 77.52 (3m) (b) or (c) and forward it to the
4 municipality, on a quarterly basis, along with a form prepared by the department of
5 revenue as described under par. (b). The marketplace provider shall notify the
6 marketplace seller that the marketplace provider has collected and forwarded the
7 taxes described in this paragraph. A municipality may not impose and collect a room
8 tax from the marketplace seller if the municipality collects the room tax as described
9 in this paragraph.

10 (b) The form prepared by the department of revenue as described under par.
11 (a) shall contain at least the following information about the room tax imposed under
12 sub. (1m) on the marketplace provider:

- 13 1. The total sales for properties located in a municipality with a room tax.
- 14 2. The total number of nights properties located in a municipality with a room
15 tax were rented.
- 16 3. The rate of the room tax applied to the amount specified in subd. 1.
- 17 4. The total tax collected for properties located in a municipality with a room
18 tax.

19 (c) Before July 31, 2020, and updated annually, the department of revenue shall
20 create a website that contains the following information about room tax collections:

- 21 1. The name and mailing address of each municipality that imposes a room tax
22 under sub. (1m).
- 23 2. The rate of the room tax imposed by each municipality specified in subd. 1.

24 **SECTION 12.** 66.0615 (2) (intro.) of the statutes is amended to read:

1 66.0615 (2) (intro.) As a means of enforcing the collection of any room tax
2 imposed by a municipality or a district under sub. (1m), the municipality or district
3 ~~may exchange audit and other information with the department of revenue and may~~
4 do any of the following:

5 **SECTION 13.** 66.0615 (2) (a) of the statutes is amended to read:

6 66.0615 (2) (a) If a municipality or district has probable cause to believe that
7 the correct amount of room tax has not been assessed or that the tax return is not
8 correct, inspect and audit the ~~financial~~ records of any person subject to sub. (1m)
9 pertaining to the furnishing or selling of accommodations to determine ~~whether the~~
10 correct amount of room tax is assessed and ~~whether any room tax return is correct~~
11 due. A determination under this subsection shall be provided in writing within 4
12 years after the due date of the return, unless no return has been filed.

13 **SECTION 14.** 66.0615 (2) (b) of the statutes is amended to read:

14 66.0615 (2) (b) Enact a schedule of forfeitures, not to exceed 5 percent of the
15 tax under sub. (1m) or par. (c), to be imposed on any person subject to sub. (1m) who
16 fails to comply with a request to inspect and audit the person's ~~financial~~ records
17 under par. (a).

18 **SECTION 15.** 66.0615 (2) (e) of the statutes is amended to read:

19 66.0615 (2) (e) Enact a schedule of forfeitures, not to exceed 25 percent of the
20 room tax due for the previous year under sub. (1m) or par. (c) or \$5,000, whichever
21 is less, to be imposed for failure to pay the tax under sub. (1m). This paragraph
22 applies to a marketplace provider that is required to collect and remit taxes imposed
23 by a municipality under sub. (1m), but that fails to file a return as required in sub.
24 (1r) or pay the required tax.

25 **SECTION 16.** 66.0615 (2m) of the statutes is created to read:

1 66.0615 **(2m)** (a) To enforce the collection of a room tax imposed by a district
2 under sub. (1m), the district may exchange audit and other information relating to
3 the room tax with the department of revenue.

4 (b) To enforce the collection of a room tax imposed by a municipality under sub.
5 (1m), the municipality may jointly inspect and audit the room tax records of a person
6 subject to sub. (1m) with other municipalities only for the purpose of conducting a
7 joint room tax audit. A municipality may provide audit and other information to the
8 department of revenue, and may exchange audit and other room tax related
9 information with any municipality that took part in conducting the joint audit.

10 **SECTION 17.** 66.0615 (3) of the statutes is amended to read:

11 66.0615 **(3)** The municipality shall provide by ordinance and the district shall
12 provide by resolution for the confidentiality of information obtained under ~~sub.~~ subs.
13 (1r) and (2) but shall provide exceptions for persons using the information in the
14 discharge of duties imposed by law or of the duties of their office or by order of a court.
15 The municipality or district may provide for the publishing of statistics classified so
16 as not to disclose the identity of particular returns. The municipality or district shall
17 provide that persons violating ordinances or resolutions enacted under this
18 subsection may be required to forfeit not less than \$100 nor more than \$500.

19 **SECTION 18.** 66.0615 (4) (a) (intro.) of the statutes is amended to read:

20 66.0615 **(4)** (a) (intro.) ~~Annually~~ Except as provided in par. (d), annually, on or
21 before May 1, on a form created and provided by the department of revenue, every
22 municipality that imposes a tax under sub. (1m) shall certify and report to the
23 department, ~~beginning in 2017,~~ all of the following:

24 **SECTION 19.** 66.0615 (4) (a) 4. of the statutes is created to read:

1 66.0615 (4) (a) 4. For a municipality subject to sub. (1m) (dm), the amount of
2 the room tax retained by the municipality in each of the following fiscal years: 2010,
3 2011, 2012, 2013, and 2014.

4 **SECTION 20.** 66.0615 (4) (d) of the statutes is created to read:

5 66.0615 (4) (d) Notwithstanding the requirement in par. (a) (intro.), the
6 information specified in par. (a) 4. may be certified and reported to the department
7 only once if the municipality submits the information not later than May 1, 2021.
8 The department shall make such information available to the public annually in the
9 report described in par. (a) (intro.).

10 **SECTION 21.** 66.0615 (5) of the statutes is repealed.

11 **SECTION 22.** 66.1014 (1) (c) of the statutes is created to read:

12 66.1014 (1) (c) “Short-term rental” means a residential dwelling that is offered
13 for rent for a fee and for fewer than 30 consecutive days.

14 **SECTION 23.** 66.1014 (2) (d) 1. of the statutes is amended to read:

15 66.1014 (2) (d) 1. If a residential dwelling is rented for periods of more than 6
16 but fewer than ~~29~~ 30 consecutive days, a political subdivision may limit the total
17 number of days within any consecutive 365-day period that the dwelling may be
18 rented to no fewer than 180 days. The political subdivision may not specify the period
19 of time during which the residential dwelling may be rented, but the political
20 subdivision may require that the maximum number of allowable rental days within
21 a 365-day period must run consecutively. A person who rents the person’s
22 residential dwelling shall notify the clerk of the political subdivision in writing when
23 the first rental within a 365-day period begins.

24 **SECTION 24. Effective dates.** This act takes effect on January 1, 2021, except
25 as follows:

