



**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 243**

June 10, 2019 – Offered by Senator KOOYENGA.

1 **AN ACT** *to repeal* 77.51 (13b); *to renumber and amend* 73.03 (71) (a), 73.03 (71)
2 (b), 73.03 (71) (c) and 73.03 (71) (d); *to amend* 66.0615 (1m) (f) 2., 77.51 (11d),
3 77.51 (13) (intro.), 77.51 (13) (a), 77.51 (13) (c), 77.982 (2), 77.991 (2) and
4 77.9951 (2); and *to create* 66.0615 (1m) (g), 73.03 (71) (a) 2., 73.03 (71) (b) 2.,
5 73.03 (71) (c) 2., 73.03 (71) (d) 2., 77.51 (7i), 77.51 (7j), 77.51 (13) (p) 7., 77.51
6 (13) (q), 77.51 (14) (n) 7., 77.51 (17) (g), 77.52 (3m), 77.52 (14) (c), 77.523, 77.585
7 (1g) and 77.585 (11) of the statutes; **relating to:** requiring marketplace
8 providers to collect and remit sales tax from third parties and reducing
9 individual income tax rates based on the collection of sales and use tax from
10 out-of-state retailers and marketplace providers.

Analysis by the Legislative Reference Bureau

Current law requires the Department of Revenue to determine the amount of additional revenue collected from the state sales and use tax from October 1, 2018, to September 30, 2019, as a result of the U.S. Supreme Court decision that expands

the state's authority to collect such taxes from out-of-state retailers. See, *South Dakota v. Wayfair, Inc.*, 585 U.S. ____ (2018). After DOR makes that determination, the Department of Administration, in consultation with DOR, must then determine how much the individual income tax rates may be reduced for the 2019 taxable year in order to decrease individual income tax revenue by the amount of additional sales and use tax revenue. If a review by the Legislative Audit Bureau results in a redetermination of the rates, the Joint Committee on Finance decides which rates to apply. The reduction in rates only applies to 2019.

This bill makes the rate reduction determined for 2019 applicable only to the second individual tax rate listed in each bracket. Those reduced rates would change again in 2020. The bill requires DOR to estimate the amount of additional revenue collected from the sales and use tax from October 1, 2019, to September 30, 2020, as a result of the Supreme Court decision. DOA, in consultation with DOR, would then use that estimation to determine how much the second individual income tax rate listed in each tax bracket may be reduced in the 2020 taxable year. Those reduced rates would apply in 2020 and in each year thereafter. The bill also requires DOR to make its estimation of additional sales and use tax revenue based on the sales and use taxes collected from out-of-state retailers and marketplace providers.

The bill requires, generally, that marketplace providers collect and remit sales tax on sales facilitated on behalf of marketplace sellers. For purposes of the bill, a "marketplace provider" is a person who facilitates a retail sale by a seller by listing or advertising for sale, in any manner, the seller's products or taxable services and through agreements or arrangements with third parties, directly or indirectly, who are collecting payment from the purchaser and transmitting that payment to the seller. The bill defines "marketplace seller" to mean 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 DOR.

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

SECTION 1. 66.0615 (1m) (f) 2. of the statutes is amended to read:

66.0615 **(1m)** (f) 2. Sections 77.51 (12m), (13), (14), (14g), (15a), and (15b), and (17), 77.52 (3), (3m), (13), (14), (18), and (19), 77.522, 77.523, 77.58 (1) to (5), (6m), and (7), 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9), (12) to (15), and (19m), and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to the tax described under subd. 1.

SECTION 2. 66.0615 (1m) (g) of the statutes is created to read:

1 66.0615 **(1m)** (g) Sections 77.52 (3m) and 77.523, as they apply to the taxes
2 under subch. III of ch. 77, shall apply to the tax imposed under par. (a) by a
3 municipality.

4 **SECTION 3.** 73.03 (71) (a) of the statutes is renumbered 73.03 (71) (a) (intro.)
5 and amended to read:

6 73.03 **(71)** (a) (intro.) To ~~determine~~ estimate the amount of additional revenue
7 reported to the department from the taxes imposed under subch. III of ch. 77 as a
8 result of the United States Supreme Court decision that expands the state's
9 authority to require out-of-state retailers and marketplace providers, as defined in
10 s. 77.51 (7i), to collect and remit the taxes imposed under subch. III of ch. 77 on
11 purchases by Wisconsin residents during the ~~period beginning following periods:~~

12 1. Beginning on October 1, 2018, and ending on September 30, 2019.

13 **SECTION 4.** 73.03 (71) (a) 2. of the statutes is created to read:

14 73.03 **(71)** (a) 2. Beginning on October 1, 2019, and ending on September 30,
15 2020.

16 **SECTION 5.** 73.03 (71) (b) of the statutes is renumbered 73.03 (71) (b) 1. and
17 amended to read:

18 73.03 **(71)** (b) 1. After the department makes the determination estimation
19 under par. (a) 1., the department shall determine how much the 2nd individual
20 income tax rates rate listed in each bracket under s. 71.06 may be reduced for the
21 taxable year ~~ending on December 31, 2019~~ beginning after December 31, 2018, and
22 before January 1, 2020, in order to decrease individual income tax revenue by the
23 amount ~~determined~~ estimated under par. (a). ~~For purposes of this paragraph, the~~
24 ~~tax rate reductions shall be calculated in proportion to the share of gross tax~~

1 ~~attributable to each of the tax brackets under s. 71.06 in effect during the most~~
2 ~~recently completed taxable year 1.~~

3 **SECTION 6.** 73.03 (71) (b) 2. of the statutes is created to read:

4 73.03 **(71)** (b) 2. After the department makes the estimation under par. (a) 2.,
5 the department shall determine how much the 2nd individual income tax rate listed
6 in each bracket under s. 71.06, as affected by subd. 1., may be reduced for the taxable
7 year beginning after December 31, 2019, and before January 1, 2021, in order to
8 decrease individual income tax revenue by the amount estimated under par. (a) 2.

9 **SECTION 7.** 73.03 (71) (c) of the statutes is renumbered 73.03 (71) (c) 1. and
10 amended to read:

11 73.03 **(71)** (c) 1. No later than October 20, 2019, the secretary of revenue shall
12 certify and report the determinations made under pars. (a) 1. and (b) 1. to the
13 secretary of the department of administration, the governor, the joint committee on
14 finance, and the legislative audit bureau and specify with that certification and
15 report that the new tax rates take effect for the taxable year ~~ending on December 31,~~
16 2019 beginning after December 31, 2018, and before January 1, 2020, subject to par.
17 (d) 1.

18 **SECTION 8.** 73.03 (71) (c) 2. of the statutes is created to read:

19 73.03 **(71)** (c) 2. No later than October 20, 2020, the secretary of revenue shall
20 certify and report the determinations made under pars. (a) 2. and (b) 2. to the
21 secretary of the department of administration, the governor, the joint committee on
22 finance, and the legislative audit bureau and specify with that certification and
23 report that the new tax rates take effect for the taxable year beginning after
24 December 31, 2019, and before January 1, 2021, and for each taxable year thereafter,
25 subject to par. (d) 2.

1 **SECTION 9.** 73.03 (71) (d) of the statutes is renumbered 73.03 (71) (d) 1. and
2 amended to read:

3 73.03 **(71)** (d) 1. The legislative audit bureau shall review the determinations
4 reported under par. (c) 1. and report its findings to the joint legislative audit
5 committee and the joint committee on finance no later than November 1, 2019. If the
6 legislative audit bureau's review of the determinations reported under par. (c) 1.
7 results in a different calculation of the tax rates than that made under par. (b) 1., the
8 joint committee on finance shall determine which tax rates to apply to the taxable
9 year ending on December 31, 2019 beginning after December 31, 2018, and before
10 January 1, 2020, and report its determination to the governor, the secretary of
11 administration, and the secretary of revenue no later than November 10, 2019.

12 **SECTION 10.** 73.03 (71) (d) 2. of the statutes is created to read:

13 73.03 **(71)** (d) 2. The legislative audit bureau shall review the determinations
14 reported under par. (c) 2. and report its findings to the joint legislative audit
15 committee and the joint committee on finance no later than November 1, 2020. If the
16 legislative audit bureau's review of the determinations reported under par. (c) 2.
17 results in a different calculation of the tax rates than that made under par. (b) 2., the
18 joint committee on finance shall determine which tax rates to apply to the taxable
19 year beginning after December 31, 2019, and before January 1, 2021, and to each
20 taxable year thereafter, and report its determination to the governor, the secretary
21 of administration, and the secretary of revenue no later than November 10, 2020.

22 **SECTION 11.** 77.51 (7i) of the statutes is created to read:

23 77.51 **(7i)** "Marketplace provider" means any person who facilitates a retail
24 sale by a seller by listing or advertising for sale by the seller, in any manner, tangible
25 personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or a

1 service specified under s. 77.52 (2) (a) and through agreements or arrangements with
2 3rd parties, directly or indirectly, who are collecting payment from the purchaser and
3 transmitting that payment to the seller, regardless of whether the person receives
4 compensation or other consideration in exchange for the services provided by the
5 person. “Marketplace provider” does not include a person who provides advertising
6 services or product listings and who neither collects payment from the purchaser nor
7 remits such payment to the marketplace seller.

8 **SECTION 12.** 77.51 (7j) of the statutes is created to read:

9 77.51 (7j) “Marketplace seller” means a seller who sells products through a
10 physical or electronic marketplace operated by a marketplace provider, regardless
11 of whether the seller is required to be registered with the department.

12 **SECTION 13.** 77.51 (11d) of the statutes is amended to read:

13 77.51 (11d) For purposes of subs. (1ag), (1f), (3pf), (7j), and (9p) and ss. 77.52
14 (20) and (21), 77.522, 77.54 (9g), (51), (52), and (60), and 77.59 (5r), “product” includes
15 tangible personal property, and items, property, and goods under s. 77.52 (1) (b), (c),
16 and (d), and services.

17 **SECTION 14.** 77.51 (13) (intro.) of the statutes is amended to read:

18 77.51 (13) (intro.) ~~Except as provided in sub. (13b), “retailer”~~ “Retailer”
19 includes:

20 **SECTION 15.** 77.51 (13) (a) of the statutes is amended to read:

21 77.51 (13) (a) Every seller who makes any sale on the seller’s own behalf or on
22 behalf of another person, regardless of whether the sale is mercantile in nature, of
23 tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or
24 (d), or a service specified under s. 77.52 (2) (a).

25 **SECTION 16.** 77.51 (13) (c) of the statutes is amended to read:

1 77.51 (13) (c) When the department determines that it is necessary for the
2 efficient administration of this subchapter to regard any salespersons,
3 representatives, peddlers, marketplace providers, or canvassers as the agents of the
4 dealers, distributors, marketplace sellers, supervisors, or employers under whom
5 they operate or from whom they obtain the tangible personal property or items,
6 property, or goods under s. 77.52 (1) (b), (c), or (d) sold by them, irrespective of
7 whether they are making the sales on their own behalf or on behalf of such dealers,
8 distributors, marketplace sellers, supervisors, or employers, the department may so
9 regard them and may regard the dealers, distributors, marketplace sellers,
10 supervisors, or employers as retailers for purposes of this subchapter.

11 **SECTION 17.** 77.51 (13) (p) 7. of the statutes is created to read:

12 77.51 (13) (p) 7. Whether the seller sells on the seller's own behalf or on behalf
13 of another person.

14 **SECTION 18.** 77.51 (13) (q) of the statutes is created to read:

15 77.51 (13) (q) A marketplace provider who facilitates, on behalf of a
16 marketplace seller, sales that are sourced to this state as provided under s. 77.522
17 of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c),
18 or (d), or services.

19 **SECTION 19.** 77.51 (13b) of the statutes is repealed.

20 **SECTION 20.** 77.51 (14) (n) 7. of the statutes is created to read:

21 77.51 (14) (n) 7. Whether the seller sells on the seller's own behalf or on behalf
22 of another person.

23 **SECTION 21.** 77.51 (17) (g) of the statutes is created to read:

24 77.51 (17) (g) Whether the seller sells on the seller's own behalf or on behalf
25 of another person.

1 **SECTION 22.** 77.52 (3m) of the statutes is created to read:

2 **77.52 (3m)** (a) Except as provided in par. (b), a marketplace provider is liable
3 for the tax imposed under this section on the entire sales price charged to the
4 purchaser, including any amount charged by the marketplace provider for
5 facilitating the sale, from the sale, license, lease or rental of tangible personal
6 property, or items, property, or goods under sub. (1) (b), (c), or (d), or services under
7 sub. (2).

8 (b) A marketplace provider whose only activities are facilitating sales of
9 tangible personal property or services described in sub. (2) (a) 1. on behalf of
10 marketplace sellers operating under a hotel, motel, or restaurant brand name shared
11 with the marketplace provider may submit an application to the department to
12 request a waiver from collecting and remitting tax on sales facilitated on behalf of
13 marketplace sellers. The application shall include the name and address of all
14 marketplace sellers selling or furnishing such tangible personal property or services
15 in this state, the marketplace seller's sales or use tax permit number obtained under
16 sub. (7) or 77.53 (9), and any other information the department requires. The
17 department may grant the waiver if it is satisfied that the tax due under this chapter
18 is collected and remitted by the marketplace sellers. A marketplace provider that
19 is granted the waiver must, within 60 days from a written request by the department,
20 provide the name and address of all marketplace sellers selling or furnishing such
21 tangible personal property or services in this state, the marketplace seller's sales or
22 use tax permit number obtained under sub. (7) or 77.53 (9), and any other
23 information the department requires.

24 (c) The department may grant waivers under par. (b) for other types of
25 marketplace providers if there is evidence that the marketplace sellers have a

1 history of reliably collecting and remitting to the department the tax on sales or there
2 is other evidence that the marketplace sellers will reliably collect and remit to the
3 department the tax on sales.

4 **SECTION 23.** 77.52 (14) (c) of the statutes is created to read:

5 77.52 (14) (c) A marketplace provider shall obtain and maintain each
6 exemption certificate from a purchaser claiming an exemption for a sale facilitated
7 by the marketplace provider on behalf of a marketplace seller.

8 **SECTION 24.** 77.523 of the statutes is created to read:

9 **77.523 Liability of marketplace providers, retailers, and marketplace**
10 **sellers. (1)** A marketplace provider shall collect and remit tax on a sale facilitated
11 on behalf of a marketplace seller, unless the marketplace provider has been granted
12 a waiver under s. 77.52 (3m) (b).

13 **(2)** A marketplace provider who collects and remits tax on a sale under sub. (1)
14 shall notify the marketplace seller that the marketplace provider is collecting and
15 remitting the tax. Upon notification, only the marketplace provider may be audited
16 and held liable for tax on the sale, unless the marketplace seller provided insufficient
17 or incorrect information to the marketplace provider under sub. (4). If notification
18 is not provided, the marketplace provider and marketplace seller may be audited and
19 held liable for tax on the sale.

20 **(3)** Upon examination by the department, a marketplace provider is relieved
21 of liability under this subchapter for the failure to collect and remit tax on a sale if
22 the marketplace provider can show all of the following to the department's
23 satisfaction:

24 (a) The sale was made solely on behalf of a marketplace seller.

25 (b) The marketplace provider notified the marketplace seller under sub. (2).

(c) The retail sale was properly sourced to this state under s. 77.522.

(4) A marketplace provider is relieved of liability under this section for failure to collect and remit the correct amount of tax to the extent that the marketplace provider demonstrates to the satisfaction of the department that the error is due to insufficient or incorrect information given to the marketplace provider by the marketplace seller, except that this subsection does not apply if the marketplace provider and the marketplace seller are related entities, as defined in s. 71.01 (9am). A marketplace seller that provides insufficient or incorrect information to the marketplace provider may be audited and held liable for the tax if the marketplace provider is relieved of liability under this subsection.

(6) Nothing in this section affects the obligations of a purchaser to remit use tax on a transaction for which the retailer or marketplace provider and marketplace seller did not collect and remit the tax.

SECTION 25. 77.585 (1g) of the statutes is created to read:

77.585 (1g) A marketplace provider who collects and remits tax on behalf of a marketplace seller under s. 77.523 may claim a bad debt deduction under this subsection if either the marketplace provider or marketplace seller may claim a deduction under section 166 of the Internal Revenue Code for the sales transaction. A marketplace seller may not claim a deduction under this subsection for the same transaction.

SECTION 26. 77.585 (11) of the statutes is created to read:

77.585 (11) A marketplace seller may claim as a deduction on a return under s. 77.58 the amount of the sales price for which the marketplace seller received notification under s. 77.523 (2).

SECTION 27. 77.982 (2) of the statutes is amended to read:

1 77.982 (2) Sections 77.51 (1f), (3pf), (9p), (12m), (13), (14), (14g), (15a), and
2 (15b), and (17), 77.52 (1b), (3), (5), (13), (14), and (18) to (23), 77.522, 77.523, 77.54
3 (51) and (52), 77.58 (1) to (5), (6m), and (7), 77.585, 77.59, 77.60, 77.61 (2), (3m), (5),
4 (6), (8), (9), (12) to (15), and (19m), and 77.62, as they apply to the taxes under subch.
5 III, apply to the tax under this subchapter. Section 77.73, as it applies to the taxes
6 under subch. V, applies to the tax under this subchapter.

7 **SECTION 28.** 77.991 (2) of the statutes is amended to read:

8 77.991 (2) Sections 77.51 (12m), (13), (14), (14g), (15a), and (15b), and (17),
9 77.52 (1b), (3), (5), (13), (14), (18), and (19), 77.522, 77.523, 77.58 (1) to (5), (6m), and
10 (7), 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (6), (8), (9), (12) to (15), and (19m), and
11 77.62, as they apply to the taxes under subch. III, apply to the tax under this
12 subchapter. Section 77.73, as it applies to the taxes under subch. V, applies to the
13 tax under this subchapter. The renter shall collect the tax under this subchapter
14 from the person to whom the passenger car is rented.

15 **SECTION 29.** 77.9951 (2) of the statutes is amended to read:

16 77.9951 (2) Sections 77.51 (3r), (12m), (13), (14), (14g), (15a), and (15b), and
17 (17), 77.52 (1b), (3), (5), (13), (14), (18), and (19), 77.522, 77.523, 77.58 (1) to (5), (6m),
18 and (7), 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (6), (8), (9), (12) to (15), and (19m),
19 and 77.62, as they apply to the taxes under subch. III, apply to the fee under this
20 subchapter. The renter shall collect the fee under this subchapter from the person
21 to whom the vehicle is rented.

22 **SECTION 30. Effective date.**

23 (1) SALES TAX COLLECTION BY MARKETPLACE PROVIDERS. This treatment of ss.
24 66.0615 (1m) (f) 2. and (g), 77.51 (7i), (7j), (11d), (13) (intro.), (a), (c), (p) 7., and (q),
25 (13b), (14) (n) 7., and (17) (g), 77.52 (3m) and (14) (c), 77.523, 77.585 (1g) and (11),

77.982 (2), 77.991 (2), and 77.9951 (2) takes effect on the first day of the calendar
quarter that is at least 3 months after publication.

3 (END)