



2019 SENATE BILL 243

May 24, 2019 - Introduced by Senators KOOYENGA, MARKLEIN, ROTH, WANGGAARD, TIFFANY and KAPENGA, cosponsored by Representatives RODRIGUEZ, MACCO and WITTKE. Referred to Committee on Agriculture, Revenue and Financial Institutions.

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,

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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 reductions determined for 2019 applicable to all subsequent taxable years, except that the second individual income tax rate listed in each tax bracket would change again in 2020. The bill requires DOR to determine 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 determination 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 determination 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 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.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

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

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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 the amount of additional revenue reported
7 to the department from the taxes imposed under subch. III of ch. 77 as a result of the
8 United States Supreme Court decision that expands the state's authority to require
9 out-of-state retailers and marketplace providers, as defined in s. 77.51 (7i), to collect
10 and remit the taxes imposed under subch. III of ch. 77 on purchases by Wisconsin
11 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 under par. (a)
19 1., the department shall determine how much the individual income tax rates under
20 s. 71.06 may be reduced for the taxable year ending on December 31, 2019, in order
21 to decrease individual income tax revenue by the amount determined under par. (a)
22 1. For purposes of this paragraph, the tax rate reductions shall be calculated in
23 proportion to the share of gross tax attributable to each of the tax brackets under s.
24 71.06 in effect during the most recently completed taxable year.

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

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1 73.03 (71) (b) 2. After the department makes the determination under par. (a)
2 2., the department shall determine how much the 2nd individual income tax rate
3 listed in each bracket under s. 71.06, as affected by subd. 1., may be reduced for the
4 taxable year ending on December 31, 2020, in order to decrease individual income
5 tax revenue by the amount determined under par. (a) 2.

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

8 73.03 (71) (c) 1. No later than October 20, 2019, the secretary of revenue shall
9 certify and report the determinations made under pars. (a) 1. and (b) 1. to the
10 secretary of the department of administration, the governor, the joint committee on
11 finance, and the legislative audit bureau and specify with that certification and
12 report that the new tax rates take effect for the taxable year ending on December 31,
13 2019, and for each taxable year thereafter, subject to par. (d) 1. and except as
14 provided in par. (b) 2.

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

16 73.03 (71) (c) 2. No later than October 20, 2020, the secretary of revenue shall
17 certify and report the determinations made under pars. (a) 2. and (b) 2. to the
18 secretary of the department of administration, the governor, the joint committee on
19 finance, and the legislative audit bureau and specify with that certification and
20 report that the new tax rates take effect for the taxable year ending on December 31,
21 2020, and for each taxable year thereafter, subject to par. (d) 2.

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

24 73.03 (71) (d) 1. The legislative audit bureau shall review the determinations
25 reported under par. (c) 1. and report its findings to the joint legislative audit

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1 committee and the joint committee on finance no later than November 1, 2019. If the
2 legislative audit bureau's review of the determinations reported under par. (c) 1.
3 results in a different calculation of the tax rates than that made under par. (b) 1., the
4 joint committee on finance shall determine which tax rates to apply to the taxable
5 year ending on December 31, 2019, and to each taxable year thereafter, except as
6 provided in par. (b) 2. and subd. 2., and report its determination to the governor, the
7 secretary of administration, and the secretary of revenue no later than November 10,
8 2019.

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

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

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

20 77.51 (7i) "Marketplace provider" means any person who facilitates a retail
21 sale by a seller by listing or advertising for sale by the seller, in any manner, tangible
22 personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or a
23 service specified under s. 77.52 (2) (a) and through agreements or arrangements with
24 3rd parties, directly or indirectly, who are collecting payment from the purchaser and
25 transmitting that payment to the seller, regardless of whether the person receives

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1 compensation or other consideration in exchange for the services provided by the
2 person.

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

4 77.51 (7j) "Marketplace seller" means a seller who sells products through a
5 physical or electronic marketplace operated by a marketplace provider, regardless
6 of whether the seller is required to be registered with the department.

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

8 77.51 (11d) For purposes of subs. (1ag), (1f), (3pf), (7i), (7j), and (9p) and ss.
9 77.52 (20) and (21), 77.522, 77.54 (9g), (51), (52), and (60), and 77.59 (5r), "product"
10 includes tangible personal property, and items, property, and goods under s. 77.52
11 (1) (b), (c), and (d), and services.

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

13 77.51 (13) (intro.) ~~Except as provided in sub. (13b), "retailer"~~ **"Retailer"**
14 includes:

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

16 77.51 (13) (a) Every seller who makes any sale on the seller's own behalf or on
17 behalf of another person, regardless of whether the sale is mercantile in nature, of
18 tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or
19 (d), or a service specified under s. 77.52 (2) (a).

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

21 77.51 (13) (c) When the department determines that it is necessary for the
22 efficient administration of this subchapter to regard any salespersons,
23 representatives, peddlers, marketplace providers, or canvassers as the agents of the
24 dealers, distributors, marketplace sellers, supervisors, or employers under whom
25 they operate or from whom they obtain the tangible personal property or items,

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1 property, or goods under s. 77.52 (1) (b), (c), or (d) sold by them, irrespective of
2 whether they are making the sales on their own behalf or on behalf of such dealers,
3 distributors, marketplace sellers, supervisors, or employers, the department may so
4 regard them and may regard the dealers, distributors, marketplace sellers,
5 supervisors, or employers as retailers for purposes of this subchapter.

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

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

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

10 77.51 (13) (q) A marketplace provider who facilitates, on behalf of a
11 marketplace seller, sales that are sourced to this state as provided under s. 77.522
12 of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c),
13 or (d), or services.

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

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

16 77.51 (14) (n) 7. Whether the seller sells on the seller's own behalf or on behalf
17 of another person.

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

19 77.51 (17) (g) Whether the seller sells on the seller's own behalf or on behalf
20 of another person.

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

22 77.52 (3m) (a) Except as provided in par. (b), a marketplace provider is liable
23 for the tax imposed under this section on the entire sales price charged to the
24 purchaser, including any amount charged by the marketplace provider for
25 facilitating the sale, from the sale, license, lease or rental of tangible personal

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1 property, or items, property, or goods under sub. (1) (b), (c), or (d), or services under
2 sub. (2).

3 (b) A marketplace provider whose only activities are facilitating sales of
4 services on behalf of marketplace sellers operating under a shared hotel, motel, or
5 restaurant brand name, may submit an application to the department to request a
6 waiver from collecting and remitting tax on sales facilitated on behalf of marketplace
7 sellers. The application shall include the name and address of all marketplace
8 sellers selling or furnishing such services in this state, the marketplace seller's sales
9 or use tax permit number obtained under sub. (7) or 77.53 (9), and any other
10 information the department requires. The department may grant the waiver if it is
11 satisfied that the tax due under this chapter is collected and remitted by the
12 marketplace sellers. A marketplace provider that is granted the waiver must, within
13 60 days from a written request by the department, provide the name and address of
14 all marketplace sellers selling or furnishing such services in this state, the
15 marketplace seller's sales or use tax permit number obtained under sub. (7) or 77.53
16 (9), and any other information the department requires. In this paragraph, "hotel"
17 and "motel" have the meaning given in sub. (2) (a) 1. and "restaurant" has the
18 meaning given in s. 97.01 (14g).

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

20 77.52 (14) (c) A marketplace provider shall obtain and maintain each
21 exemption certificate from a purchaser claiming an exemption for a sale facilitated
22 by the marketplace provider on behalf of a marketplace seller.

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

24 **77.523 Liability of marketplace providers, retailers, and marketplace**
25 **sellers. (1)** A marketplace provider shall collect and remit tax on a sale facilitated

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1 on behalf of a marketplace seller, unless the marketplace provider has been granted
2 a waiver under s. 77.52 (3m) (b).

3 (2) A marketplace provider who collects and remits tax on a sale under sub. (1)
4 shall notify the marketplace seller that the marketplace provider is collecting and
5 remitting the tax. Upon notification, only the marketplace provider may be audited
6 and held liable for tax on the sale. If notification is not provided, the marketplace
7 provider and marketplace seller may be audited and held liable for tax on the sale.

8 (3) Upon examination by the department and subject to the limitations in sub.
9 (5), a marketplace provider is relieved of liability under this subchapter for the
10 failure to collect and remit tax on a sale if the marketplace provider can show all of
11 the following to the department's satisfaction:

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

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

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

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

21 (5) The relief from liability under subs. (3) and (4) may not exceed the following
22 amounts:

23 (a) For 2019, 5 percent of the tax due for that year.

24 (b) For 2020, 5 percent of the tax due for that year.

25 (c) For 2021, 3 percent of the tax due for that year.

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1 (d) For 2022, and for each year thereafter, 0 percent of the tax due for that year.

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

5 (7) No person may bring a class action against a marketplace provider in any
6 court of this state on behalf of consumers arising from or in any way related to an
7 overpayment of sales or use tax collected on sales facilitated by the marketplace
8 provider, regardless of whether that claim is characterized as a claim for a refund.
9 This subsection does not affect a person's ability to claim a refund as provided under
10 s. 77.59.

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

12 77.585 (1g) A marketplace provider who collects and remits tax on behalf of a
13 marketplace seller under s. 77.523 may claim a bad debt deduction under this
14 subsection if either the marketplace provider or marketplace seller may claim a
15 deduction under section 166 of the Internal Revenue Code for the sales transaction.
16 A marketplace seller may not claim a deduction under this subsection for the same
17 transaction.

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

19 77.585 (11) A marketplace seller may claim as a deduction on a return under
20 s. 77.58 the amount of the sales price for which the marketplace seller received
21 notification under s. 77.523 (2).

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

23 77.982 (2) Sections 77.51 (1f), (3pf), (9p), (12m), (13), (14), (14g), (15a), and
24 (15b), and (17), 77.52 (1b), (3), (5), (13), (14), and (18) to (23), 77.522, 77.523, 77.54
25 (51) and (52), 77.58 (1) to (5), (6m), and (7), 77.585, 77.59, 77.60, 77.61 (2), (3m), (5),

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1 (6), (8), (9), (12) to (15), and (19m), and 77.62, as they apply to the taxes under subch.
2 III, apply to the tax under this subchapter. Section 77.73, as it applies to the taxes
3 under subch. V, applies to the tax under this subchapter.

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

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

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

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

19 **SECTION 30. Effective date.**

20 (1) SALES TAX COLLECTION BY MARKETPLACE PROVIDERS. This treatment of ss.
21 66.0615 (1m) (f) 2. and (g), 77.51 (7i), (7j), (11d), (13) (intro.), (a), (c), (p) 7., and (q),
22 (13b), (14) (n) 7., and (17) (g), 77.52 (3m) and (14) (c), 77.523, 77.585 (1g) and (11),
23 77.982 (2), 77.991 (2), and 77.9951 (2) takes effect on the first day of the calendar
24 quarter that is at least 3 months after publication.

25 (END)