

State of Wisconsin



2019 Assembly Bill 251

Date of enactment: **July 3, 2019**
Date of publication*: **July 4, 2019**

2019 WISCONSIN ACT 10

AN ACT to repeal 77.51 (13b); to renumber and amend 73.03 (71) (a), 73.03 (71) (b), 73.03 (71) (c) and 73.03 (71) (d); to amend 66.0615 (1m) (f) 2., 77.51 (11d), 77.51 (13) (intro.), 77.51 (13) (a), 77.51 (13) (c), 77.982 (2), 77.991 (2) and 77.9951 (2); and to create 66.0615 (1m) (g), 73.03 (71) (a) 2., 73.03 (71) (b) 2., 73.03 (71) (c) 2., 73.03 (71) (d) 2., 73.03 (74), 77.51 (7i), 77.51 (7j), 77.51 (13) (p) 7., 77.51 (13) (q), 77.51 (14) (n) 7., 77.51 (17) (g), 77.52 (3m), 77.52 (14) (c), 77.523, 77.585 (1g) and 77.585 (11) of the statutes; relating to: requiring marketplace providers to collect and remit sales tax from third parties and reducing individual income tax rates based on the collection of sales and use tax from out-of-state retailers and marketplace providers.

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:

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

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

73.03 (71) (a) (intro.) To determine estimate the amount of additional revenue reported to the department from the taxes imposed under subch. III of ch. 77 as a result of the United States Supreme Court decision that

expands the state's authority to require out-of-state retailers and marketplace providers, as defined in s. 77.51 (7i), to collect and remit the taxes imposed under subch. III of ch. 77 on purchases by Wisconsin residents during the period beginning following periods:

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

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

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

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

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

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

reductions shall be calculated in proportion to the share of gross tax attributable to each of the tax brackets under s. 71.06 in effect during the most recently completed taxable year so that 50 percent of the estimation under par. (a) 1. is used to reduce the 1st individual income tax rate listed in each bracket and the remaining 50 percent is used to reduce the 2nd individual income tax rate listed in each bracket.

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

73.03 (71) (b) 2. After the department makes the estimation under par. (a) 2., the department shall determine how much the 1st and 2nd individual income tax rates listed in each bracket under s. 71.06 may be reduced for the taxable year beginning after December 31, 2019, and before January 1, 2021, in order to decrease individual income tax revenue by the amount estimated under par. (a) 2. For purposes of this paragraph, the tax rate reductions shall be calculated so that 50 percent of the estimation under par. (a) 2. is used to reduce the 1st individual income tax rate listed in each bracket and the remaining 50 percent is used to reduce the 2nd individual income tax rate listed in each bracket.

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

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

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

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

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

73.03 (71) (d) 1. The legislative audit bureau shall review the determinations reported under par. (c) 1. and report its findings to the joint legislative audit committee and the joint committee on finance no later than November 1, 2019. If the legislative audit bureau's review of the determinations reported under par. (c) 1. results in a different calculation of the tax rates than that made under par. (b) 1., the joint committee on finance shall determine

which tax rates to apply to the taxable year ending on December 31, 2019 beginning after December 31, 2018, and before January 1, 2020, and report its determination to the governor, the secretary of administration, and the secretary of revenue no later than November 10, 2019.

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

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

SECTION 10d. 73.03 (74) of the statutes is created to read:

73.03 (74) To provide a one-time reduction from the total tax due in a written notice by the department of an audit determination under s. 77.59 (2) equal to 10 percent of the additional sales tax imposed under s. 77.52 for each year of the audit period, if the annual gross sales of the person being audited are less than \$5,000,000 for each year of the audit period and, at the time that the department sends notification of examination under s. 77.59 (2), the department has received all returns required under ch. 77 from the person being audited for the entire audit period. Each person eligible for a reduction under this subsection is entitled to only one such reduction.

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

77.51 (7i) "Marketplace provider" 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 s. 77.52 (1) (b), (c), or (d), or a service specified under s. 77.52 (2) (a) and, who directly or indirectly, through agreements or arrangements with 3rd 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.

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

77.51 (7j) "Marketplace seller" 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The department may grant waivers under par. (b) for other types of marketplace providers if there is evidence that the marketplace sellers have a history of reliably collecting and remitting to the department the tax on sales or there is other evidence that the marketplace sellers will reliably collect and remit to the department the tax on sales.

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

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

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

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

(2) A marketplace provider who collects and remits tax on a sale under sub. (1) shall notify the marketplace seller that the marketplace provider is collecting and

remitting the tax. Only the marketplace provider may be audited and held liable for the tax on the sale. Except for transactions for which a marketplace provider seeks relief under sub. (4), a marketplace seller shall not be subject to audit or held liable on marketplace provider transactions.

(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:

77.982 (2) Sections 77.51 (1f), (3pf), (9p), (12m), (13), (14), (14g), (15a), and (15b), and (17), 77.52 (1b),

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

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

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

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

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

SECTION 29m. Initial applicability.

(1d) REDUCTION OF AUDIT DETERMINATIONS. The treatment of s. 73.03 (74) first applies to written notices of audit determinations made on October 1, 2019.

SECTION 30. Effective date.

(1) SALES TAX COLLECTION BY MARKETPLACE PROVIDERS. This treatment of ss. 66.0615 (1m) (f) 2. and (g), 77.51 (7i), (7j), (11d), (13) (intro.), (a), (c), (p) 7., and (q), (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.

(1d) REDUCTION OF AUDIT DETERMINATIONS. The treatment of s. 73.03 (74) takes effect on October 1, 2019.