



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2019 Assembly Bill 251

**Assembly Substitute
Amendment 1, Assembly
Amendments 2, 3, 4, and 5 to
Assembly Substitute
Amendment 1, and Assembly
Amendment 2 to Assembly
Amendment 5 to Assembly
Substitute Amendment 1**

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2019 ASSEMBLY BILL 251

2019 Assembly Bill 251 imposes liability to collect sales tax on “marketplace providers,” defined by the bill to be persons who facilitate retail sales by listing or advertising sales by a seller of taxable property or services and who, directly or indirectly, collect payment from the purchaser and transmits that payment to the seller. The bill applies the changes to tax collection liability to the statewide sales tax as well as certain local sales taxes administered under ch. 77, Stats., and also applies the definitions created by the bill to local room taxes under s. 66.0615, Stats.

In addition to imposing collection liability on marketplace providers, the bill revises current law with respect to use of tax collections increased due to changes to law enacted in response to the U.S. Supreme Court’s decision in *South Dakota v. Wayfair*, 585 U.S. ___ (2018).¹ Current law directs that the tax collections from October 1, 2018 to September 30, 2019 must be used to reduce 2019 individual income tax rates. Under the bill, the Department of Revenue (DOR) must also determine the increase in tax collections from October 1, 2019 to September 30,

¹ In *Wayfair*, the U.S. Supreme Court upheld a South Dakota law that required out-of-state sellers to collect sales tax if a seller delivers more than \$100,000 in goods and services or engages in 200 or more separate transactions in that state in a given year.

2020. The bill directs that these collections must be used to reduce the second individual income tax rate in 2020, and applies that comprehensive reduction schedule in tax years thereafter.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 retains the general structure of Assembly Bill 251, such that it also imposes liability to collect sales tax on marketplace providers and revises current law with respect to use of tax collections increased following the *Wayfair* decision. Differences between the bill and the substitute amendment include the following:

- With respect to reduction of individual income tax rates, the substitute amendment uses collections increased in 2019 and 2020 to reduce only the second individual income tax rate, for tax years 2019, 2020, and years thereafter.
- With respect to liability of marketplace providers, the bill specifies that after a marketplace provider gives notice of collection to a marketplace seller, only the provider may be audited and held liable for a tax on the sale. The substitute amendment specifies that a marketplace seller remains liable if the seller provides insufficient or incorrect information to the provider. The substitute amendment also removes a provision of the bill providing a phase-out schedule for a provider's relief from liability.
- Under the bill, DOR may grant a waiver from sales tax collection to certain providers associated with hotels, motels, and restaurants. The substitute amendment expands DOR's waiver authority to other types of marketplace providers if there is evidence that a seller has a history of reliably collecting sales tax, or if there is evidence that a seller will do so.
- With respect to the definition of marketplace provider, the substitute amendment specifies that a provider does not include a person who provides advertising but does not collect or remit payment to a marketplace seller.
- The substitute amendment removes a provision of the bill prohibiting class action lawsuits against marketplace providers on behalf of consumers arising from overpayment of taxes collected on sales facilitated by the marketplace provider.²

ASSEMBLY AMENDMENT 2 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Amendment 2 to Assembly Substitute Amendment 1 makes several technical changes to the substitute amendment. In particular, it clarifies the manner in which the tax rate reduction will be calculated in tax year 2020 and years thereafter; it removes additional provisions of the substitute amendment to reflect the removal of provisions relating to a

² Current law states: "No claim may be maintained against the state or any other party under this section if the relief sought includes the refund of or damages associated with a tax administered by the state." [s. 803.08 (14), Stats.]

provider's relief from liability; and it further revises the definition of marketplace provider to exclude persons who do not process payments from the definition.

ASSEMBLY AMENDMENT 3 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Amendment 3 to Assembly Substitute Amendment 1 applies the income tax rate reduction to the first and second individual income tax rates such that 50 percent of each estimation of increased sales tax revenue is used to reduce each of the first and second tax rates.

ASSEMBLY AMENDMENT 4 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Amendment 4 to Assembly Substitute Amendment 1 revises the provisions of the substitute amendment relating to sales tax collection liability of marketplace sellers. Under Assembly Amendment 4, a marketplace seller may only be held liable for collection of tax if the marketplace provider demonstrates to DOR that the marketplace seller provided insufficient or incorrect information to the provider.

ASSEMBLY AMENDMENT 5 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Amendment 5 to Assembly Substitute Amendment 1 directs DOR to provide a one-time reduction from total tax due in a sales tax audit, equal to 10% of additional sales tax imposed 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.

ASSEMBLY AMENDMENT 2 TO ASSEMBLY AMENDMENT 5 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Amendment 2 to Assembly Amendment 5 to Assembly Substitute Amendment 1 further revises Assembly Amendment 5 to specify that the reduction may only be provided if the person being audited has provided all required returns to DOR at the time DOR sends notification of examination. Additionally the amendment further clarifies that a person eligible for the reduction is entitled to only one such reduction, and that the provision of the reduction first applies to written notices of audit determinations made on October 1, 2019.

BILL HISTORY

2019 Assembly Bill 251 was introduced by Representative Rodriguez on May 31, 2019. On June 6, 2019, the Assembly Committee on Ways and Means held a public hearing on Assembly Bill 251. Representative Rodriguez offered Assembly Substitute Amendment 1 on June 7, 2019. On June 11, 2019, the Assembly Committee on Ways and Means recommended adoption of Assembly Substitute Amendment 1 and passage of Assembly Bill 251, as amended, on successive votes of Ayes, 7; Noes, 4.

On June 13, 2019, the Joint Committee on Finance (JFC) offered Assembly Amendments 2 and 3 to Assembly Substitute Amendment 1. On the same day, JFC recommended adoption of

Assembly Amendments 2 and 3, adoption of Assembly Substitute Amendment 1, as amended, and passage of Assembly Bill 251, as amended, on unanimous votes.

On June 19, 2019, Representative Rodriguez offered Assembly Amendment 4 to the substitute amendment, and Speaker Vos offered Assembly Amendment 5 to the substitute amendment. Speaker Vos offered Assembly Amendment 2 to Assembly Amendment 5 to the substitute amendment on June 20, 2019, and on the same day, the Assembly adopted Assembly Amendments 2, 3, and 4 to Assembly Substitute Amendment 1, Assembly Amendment 2 to Assembly Amendment 5 to Assembly Substitute Amendment 1, Assembly Amendment 5 to Assembly Substitute Amendment 1, and Assembly Substitute Amendment 1; and passed Assembly Bill 251 on successive voice votes.

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