



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1887/P4
EKL:amn&wlj

DOA:.....Gilchrist, BB0307 – Require e-commerce marketplace providers to collect and remit tax from third parties

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

GENERAL TAXATION

1. Collection of sales tax by marketplace providers

This bill requires that marketplace providers collect and remit sales and use tax on sales facilitated on behalf of marketplace sellers. For purposes of the bill, a “marketplace provider” is a person who contracts with a seller to facilitate the sale of the seller’s products through a physical or electronic marketplace operated by the person and who engages in certain activities with respect to the seller’s products, such as providing services for payment processing, order taking, or fulfillment and storage. Additionally, the person must engage, directly or through an affiliated person, in activities related to the marketplace’s operation, such as transmitting the offer or acceptance between the marketplace seller and a buyer, providing a virtual currency used to purchase products from the marketplace seller, or developing software for the marketplace. 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* 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:

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

77.51 **(7i)** (a) “Marketplace provider” means a person who contracts with a seller to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller’s products through a physical or electronic marketplace operated by the person and who meets all of the following conditions:

1. The person engages, directly or through one or more affiliated persons, in any of the following activities:

a. Transmitting or communicating the offer or acceptance between the seller and a buyer.

b. Owning or operating the technology or the electronic or physical infrastructure that brings together the seller and a buyer.

c. Providing a virtual currency that a buyer is allowed or required to use to purchase a product from the seller.

d. Developing software or conducting research and development for an activity described in par. (b) that is directly related to a physical or electronic marketplace operated by the person or an affiliated person.

2. The person engages in any of the following activities with respect to the seller's products:

a. Providing payment processing services.

b. Providing fulfillment or storage services.

c. Listing products for sale.

d. Setting prices.

e. Branding sales as those of the marketplace provider.

f. Taking orders.

g. Advertising or promotion.

h. Accepting or assisting with returns or exchanges or providing other types of customer service.

(b) For purposes of this subsection, "affiliated person" means a person who, with respect to another person, meets any of the following conditions:

1. The person has an ownership interest of more than 5 percent, whether direct or indirect, in the other person.

2. The person is related to the other person because a 3rd person, or group of 3rd persons who are affiliated persons with respect to each other, holds an ownership interest of more than 5 percent, whether direct or indirect, in the related person.

SECTION 4. 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 5. 77.51 (11d) of the statutes is amended to read:

77.51 (11d) For purposes of subs. (1ag), (1f), (3pf), ~~(7i), (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 6. 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 7. 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 8. 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 9. 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 10. 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 11. 77.51 (13b) of the statutes is repealed.

SECTION 12. 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 13. 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 14. 77.52 (3m) of the statutes is created to read:

77.52 (3m) A marketplace provider is liable for the tax imposed under this section on the sales price the marketplace provider charges to the purchaser of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services under sub. (2), including any charges for facilitating the sale of the property, items, goods, or services.

SECTION 15. 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 16. 77.523 of the statutes is created to read:

77.523 Liability of marketplace providers and sellers. (1) A marketplace provider shall collect and remit tax on a sale facilitated on behalf of a marketplace seller.

(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. Upon notification, only the marketplace provider may be audited and held liable for tax on the sale. If notification is not provided, the marketplace provider and marketplace seller may be audited and held liable for tax on the sale.

(3) Upon examination by the department and subject to the limitations in subs. (4) to (6), a marketplace provider is relieved of liability under this subchapter for the failure to collect and remit tax on a sale if the marketplace provider can show all of the following to the department's satisfaction:

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

(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) The relief from liability under sub. (3) may not exceed 5 percent of the tax due for the sale.

(5) Subsection (3) does not apply if the failure to collect and remit tax was due to an error in sourcing the sale under s. 77.522.

(6) Subsection (3) does not apply to a sale occurring after December 31, 2020.

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

SECTION 17. 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 18. 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 19. 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 20. 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 21. 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 9437. Effective dates; Revenue.

(1) SALES TAX COLLECTION BY MARKETPLACE PROVIDERS. The 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 or, for a marketplace provider, the day on which the marketplace provider is notified by the department of revenue under s. 77.51 (13) (c), 2017 stats., to collect tax on sales made on behalf of 3rd-party sellers, whichever is earlier.

(END)