



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-5052/1
MES:ahe&amn

2019 SENATE BILL 646

January 8, 2020 - Introduced by Senators OLSEN, BEWLEY and JACQUE, cosponsored by Representatives KITCHENS, BILLINGS, NOVAK, EMERSON, BOWEN, CONSIDINE, DITTRICH, DUCHOW, EDMING, L. MYERS, POPE, RODRIGUEZ, SKOWRONSKI, SPIROS, SWEARINGEN and TRANEL. Referred to Committee on Agriculture, Revenue and Financial Institutions.

1 **AN ACT** *to repeal* 66.0615 (1) (bs), 66.0615 (1) (de) and 66.0615 (5); *to renumber*
2 *and amend* 59.25 (3) (e); *to amend* 66.0615 (1) (dk), 66.0615 (1m) (a), 66.0615
3 (1m) (g), 66.0615 (2) (intro.), 66.0615 (2) (a), 66.0615 (2) (b), 66.0615 (4) (a)
4 (intro.) and 66.1014 (2) (d) 1.; and *to create* 59.25 (3) (e) 1., 59.25 (3) (e) 2.,
5 66.0615 (1) (bt), 66.0615 (1r), 66.0615 (2) (f), 66.0615 (2m), 66.0615 (4) (a) 4.,
6 66.0615 (4) (d) and 66.1014 (1) (c) of the statutes; **relating to:** expanding
7 applicability of the room tax, making substantive and technical changes to the
8 local room tax, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill expands the applicability of the room tax, makes a number of substantive and technical changes to the local room tax in the areas of collections, audits, and the exchange of information between local governments and the Department of Revenue, establishes a common tax base between the sales tax and the room tax, and authorizes a municipality (city, village, or town) to impose a forfeiture of up to \$500 per day on a marketplace provider (a person who facilitates a retail sale by a seller by listing or advertising, to the extent that the marketplace provider facilitates the sale or furnishing of rooms, lodging or other accommodations to transients) that does not timely file a required room tax return to the municipality

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or pay the required tax. The maximum forfeiture that may be imposed for any year is \$45,000, and a forfeiture that is imposed may be appealed to the municipality which imposed it. The municipality may waive the forfeiture.

Currently, the room tax may be imposed by a municipality or a local exposition district on the privilege of furnishing rooms or lodging to transients by hotelkeepers, motel operators, lodging marketplaces, and other persons who furnish such accommodations. Under the bill, the room tax may be imposed by a municipality or district on the sales price from selling or furnishing rooms or lodging to transients by hotelkeepers, motel operators, and others. 2019 Wisconsin Act 10 in effect requires lodging marketplaces to collect and remit sales taxes from third parties.

Under current law, to enforce the collection of a room tax imposed by a municipality or district, if such entities have probable cause to believe that the correct amount of room tax has not been assessed or that a room tax return is incorrect, they may inspect and audit the financial records of any person subject to the room tax. Under the bill, to perform such room tax enforcement, a municipality or district may inspect and audit tax-related records of a person subject to the room tax. In addition, the bill repeals the probable cause component.

The technical changes made by the bill include the following:

1. Requires counties to provide DOR with the complete county tax roll.
2. Applies to the room tax a number of definitions that currently apply to the general sales and use tax.
3. Clarifies that persons who are subject to the room tax must file a room tax return in the manner and form, and within the time, prescribed by a municipality. The municipality may require such persons to provide certain specific information with the return.
4. Authorizes a municipality or district performing an audit related to the room tax to conduct joint audits with other such entities and to exchange audit information with DOR and any municipality that took part in the joint audit.

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.** 59.25 (3) (e) of the statutes is renumbered 59.25 (3) (e) (intro.) and
2 amended to read:

3 59.25 **(3)** (e) (intro.) Annually by March 15, furnish to the department of
4 revenue ~~the completed tax roll settlement sheets prescribed under s. 70.09 (3).~~ all of
5 the following:

6 **SECTION 2.** 59.25 (3) (e) 1. of the statutes is created to read:

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1 59.25 (3) (e) 1. The completed tax roll settlement sheets prescribed under s.
2 70.09 (3).

3 **SECTION 3.** 59.25 (3) (e) 2. of the statutes is created to read:

4 59.25 (3) (e) 2. The complete county tax roll, as that term is used in s. 70.65,
5 in a form and manner prescribed by the department.

6 **SECTION 4.** 66.0615 (1) (bs) of the statutes is repealed.

7 **SECTION 5.** 66.0615 (1) (bt) of the statutes is created to read:

8 66.0615 (1) (bt) “Marketplace provider” has the meaning given in s. 77.51 (7i),
9 to the extent that the marketplace provider facilitates the sale or furnishing of
10 rooms, lodging, or other accommodations to transients under sub. (1m) (a).

11 **SECTION 6.** 66.0615 (1) (de) of the statutes is repealed.

12 **SECTION 7.** 66.0615 (1) (dk) of the statutes is amended to read:

13 66.0615 (1) (dk) “Short-term rental” means a residential dwelling that is
14 offered for rent for a fee and for fewer than ~~29~~ 30 consecutive days.

15 **SECTION 8.** 66.0615 (1m) (a) of the statutes is amended to read:

16 66.0615 (1m) (a) The governing body of a municipality may enact an ordinance,
17 and a district, under par. (e), may adopt a resolution, imposing a tax on the ~~privilege~~
18 of sales price from selling or furnishing, at retail, except sales for resale, rooms or
19 lodging to transients by hotelkeepers, motel operators, ~~lodging marketplaces,~~
20 marketplace providers, owners of short-term rentals, and other persons or retailers
21 selling or furnishing accommodations that are available to the public, irrespective
22 of whether membership is required for use of the accommodations. A tax imposed
23 under this paragraph may be collected from the consumer or user, but may not be
24 imposed on sales to the federal government and persons listed under s. 77.54 (9a).
25 A tax imposed under this paragraph by a municipality shall be paid to the

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1 municipality and, with regard to any tax revenue that may not be retained by the
2 municipality, shall be forwarded by the municipality to a tourism entity or a
3 commission if one is created under par. (c), as provided in par. (d). Except as provided
4 in par. (am), a tax imposed under this paragraph by a municipality may not exceed
5 8 percent of the sales price. Except as provided in par. (am), if a tax greater than 8
6 percent of the sales price under this paragraph is in effect on May 13, 1994, the
7 municipality imposing the tax shall reduce the tax to 8 percent, effective on
8 June 1, 1994.

9 **SECTION 9.** 66.0615 (1m) (g) of the statutes, as created by 2019 Wisconsin Act
10 10, is amended to read:

11 66.0615 **(1m)** (g) Sections 77.51 (10), (12m), (13), (13g), (14), (14g), (15a), (15b),
12 and (17), 77.52 (3), (3m) and, (13), (14), (18), and (19), 77.522, 77.523, 77.53 (7), 77.54,
13 77.58 (6m), and 77.585, as they apply to the taxes under subch. III of ch. 77, shall
14 apply to the tax imposed under par. (a) by a municipality.

15 **SECTION 10.** 66.0615 (1r) of the statutes is created to read:

16 66.0615 **(1r)** Persons who are subject to the tax imposed by a municipality
17 under sub. (1m) shall file returns in the manner and form, and within the time,
18 prescribed by the municipality. The municipality may also require such persons to
19 include with the person's return the following information about the property subject
20 to the room tax:

21 (a) The address of each property.

22 (b) The total sales for each property.

23 (c) The total tax collected for each property.

24 (d) The number of nights each short-term rental was rented.

25 **SECTION 11.** 66.0615 (2) (intro.) of the statutes is amended to read:

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1 66.0615 (2) (intro.) As a means of enforcing the collection of any room tax
2 imposed by a municipality or a district under sub. (1m), the municipality or district
3 may exchange audit and other information with the department of revenue and may
4 do any of the following:

5 **SECTION 12.** 66.0615 (2) (a) of the statutes is amended to read:

6 66.0615 (2) (a) ~~If a~~ A municipality or district has probable cause to believe that
7 ~~the correct amount of room tax has not been assessed or that the tax return is not~~
8 ~~correct,~~ may inspect and audit the financial records of any person subject to sub. (1m)
9 pertaining to the furnishing or selling of accommodations to determine whether the
10 correct amount of room tax is assessed and whether any room tax return is correct
11 due. A determination under this subsection shall be provided in writing within 4
12 years after the due date of the return, unless no return has been filed.

13 **SECTION 13.** 66.0615 (2) (b) of the statutes is amended to read:

14 66.0615 (2) (b) Enact a schedule of forfeitures, not to exceed 5 percent of the
15 tax under sub. (1m) or par. (c), to be imposed on any person subject to sub. (1m) who
16 fails to comply with a request to inspect and audit the person's financial records
17 under par. (a).

18 **SECTION 14.** 66.0615 (2) (f) of the statutes is created to read:

19 66.0615 (2) (f) A marketplace provider that is required to collect and remit
20 taxes imposed by a municipality under sub. (1m) (a), but fails to file a return as
21 required in sub. (1r) or pay the required tax, may be subject to a forfeiture of \$500
22 for each day a return is not filed or the tax is not paid. The total amount of forfeitures
23 that may be imposed by a municipality may not exceed \$45,000 for any year in which
24 a required return is not filed or required tax is not remitted. A forfeiture imposed

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1 under this paragraph may be appealed to the municipality, which may waive the
2 forfeiture.

3 **SECTION 15.** 66.0615 (2m) of the statutes is created to read:

4 66.0615 (2m) (a) To enforce the collection of a room tax imposed by a district
5 under sub. (1m), the district may exchange audit and other information relating to
6 the room tax with the department of revenue.

7 (b) To enforce the collection of a room tax imposed by a municipality under sub.
8 (1m), the municipality may jointly inspect and audit the room tax records of a person
9 subject to sub. (1m) with other municipalities only for the purpose of conducting a
10 joint room tax audit. A municipality may provide audit and other information to the
11 department of revenue, and may exchange audit and other room tax related
12 information with any municipality that took part in conducting the joint audit.

13 **SECTION 16.** 66.0615 (4) (a) (intro.) of the statutes is amended to read:

14 66.0615 (4) (a) (intro.) ~~Annually~~ Except as provided in par. (d), annually, on or
15 before May 1, on a form created and provided by the department of revenue, every
16 municipality that imposes a tax under sub. (1m) shall certify and report to the
17 department, ~~beginning in 2017~~, all of the following:

18 **SECTION 17.** 66.0615 (4) (a) 4. of the statutes is created to read:

19 66.0615 (4) (a) 4. For a municipality subject to sub. (1m) (dm), the amount of
20 the room tax retained by the municipality in each of the following fiscal years: 2010,
21 2011, 2012, 2013, and 2014.

22 **SECTION 18.** 66.0615 (4) (d) of the statutes is created to read:

23 66.0615 (4) (d) Notwithstanding the requirement in par. (a) (intro.), the
24 information specified in par. (a) 4. may be certified and reported to the department
25 only once if the municipality submits the information not later than May 1, 2021.

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1 The department shall make such information available to the public annually in the
2 report described in par. (a) (intro.).

3 **SECTION 19.** 66.0615 (5) of the statutes is repealed.

4 **SECTION 20.** 66.1014 (1) (c) of the statutes is created to read:

5 66.1014 (1) (c) "Short-term rental" means a residential dwelling that is offered
6 for rent for a fee and for fewer than 30 consecutive days.

7 **SECTION 21.** 66.1014 (2) (d) 1. of the statutes is amended to read:

8 66.1014 (2) (d) 1. If a residential dwelling is rented for periods of more than 6
9 but fewer than ~~29~~ 30 consecutive days, a political subdivision may limit the total
10 number of days within any consecutive 365-day period that the dwelling may be
11 rented to no fewer than 180 days. The political subdivision may not specify the period
12 of time during which the residential dwelling may be rented, but the political
13 subdivision may require that the maximum number of allowable rental days within
14 a 365-day period must run consecutively. A person who rents the person's
15 residential dwelling shall notify the clerk of the political subdivision in writing when
16 the first rental within a 365-day period begins.

17 **SECTION 22. Effective date.**

18 (1) This act takes effect on the first day of the 3rd month beginning after
19 publication.

20

(END)