

**2019 DRAFTING REQUEST**

**Bill**

For: **Administration-Budget** Drafter: **elunder**  
 By: **Gilchrist** Secondary Drafters:  
 Date: **2/8/2019** May Contact:

Same as LRB:

Submit via email: **YES**  
 Requester's email:  
 Carbon copy (CC) to: **doasbostatlanguage@wisconsin.gov**  
**erika.lunder@legis.wisconsin.gov**  
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**Pre Topic:**

DOA:.....Gilchrist, BB0307 -

**Topic:**

Require e-commerce marketplace providers to collect and remit tax from third parties

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	elunder 2/15/2019	anienaja 2/15/2019			
/P1	elunder 2/19/2019	anienaja 2/19/2019	lparisi 2/15/2019		State
/P2	elunder 2/20/2019	anienaja 2/20/2019	wjackson 2/19/2019		State
/P3	elunder 2/21/2019	wjackson 2/21/2019	lparisi 2/20/2019		State



## Lunder, Erika

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**From:** Hanaman, Cathlene  
**Sent:** Thursday, February 7, 2019 4:56 PM  
**To:** Kreye, Joseph; Lunder, Erika; Shovers, Marc  
**Subject:** FW: Statutory Language Drafting Request - 2019-21  
**Attachments:** Market Place Drafting Instructions.docx

**From:** john.gilchcrist@wisconsin.gov <john.gilchcrist@wisconsin.gov>  
**Sent:** Thursday, February 07, 2019 4:52 PM  
**To:** Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>  
**Cc:** Ziegler, Paul - DOA <Paul2.Ziegler@wisconsin.gov>; Gilchrist, John M - DOA <John.Gilchrist@wisconsin.gov>  
**Subject:** Statutory Language Drafting Request - 2019-21

Biennial Budget: 2019-21

Topic: Market Place Providers

Tracking Code: BB0307

SBO Team: TLGED

SBO Analyst: Gilchrist, John  
Phone: 608-266-7597  
E-mail: [john.gilchcrist@wisconsin.gov](mailto:john.gilchcrist@wisconsin.gov)

Agency Acronym: 566

Agency Number: 566

Priority: Low

Intent:

To amend current law to require e-commerce market place providers to collect and remit sales tax from 3rd-parties.

Attachments: True

Please send completed drafts to [SBOSatlanguage@spsmail.enterprise.wistate.us](mailto:SBOSatlanguage@spsmail.enterprise.wistate.us)

## DRAFTING INSTRUCTIONS

✓ **Create sec. 77.51(7i), Wis. Stats., to read:**

"Marketplace provider" means a person that contracts with sellers 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 engages:

(a) Directly or indirectly, through one or more affiliated persons in any of the following:

1. Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;
2. Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;
3. Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or
4. Software development or research and development activities related to any of the activities described in par. (b), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(b) In any of the following activities with respect to the seller's products:

1. Payment processing services;
2. Fulfillment or storage services;
3. Listing products for sale;
4. Setting prices;
5. Branding sales as those of the marketplace facilitator;
6. Order taking;
7. Advertising or promotion; or
8. Providing customer service or accepting or assisting with returns or exchanges.

✓ **Create sec. 77.51(7j), Wis. Stats., to read:**

"Marketplace seller" means a seller that makes sales through any physical or electronic marketplaces operated by a marketplace provider.

✓ **Amend sec. 77.51(11d), Wis. Stats., as follows:**

For purposes of subs. (1ag), (1f), (3pf), (7i), 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.

✓ **Amend sec. 77.51(13)(a), Wis. Stats., as follows:**

Every seller who makes any sale, on its 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)."

✓ **Amend sec. 77.51(13)(c), Wis. Stats., to read:**

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.

✓ **Create sec. 77.51(13)(p)7., Stats., as follows:**

Whether the seller sells on its own behalf or on behalf of another person.

✓ **Create sec. 77.51(13)(q), Wis. Stats., to read:**

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

✓ **Repeal sec. 77.51(13b), Wis. Stats.**

✓ **Create sec. 77.51(14)(n)7., Wis. Stats., as follows:**

Whether the seller sells on its own behalf or on behalf of another person.

✓ **Create sec. 77.51(17)(g), Wis. Stats., as follows:**

Whether the seller sells on its own behalf or on behalf of another person.

✓ **Create sec. 77.52(3m), Wis. Stats., as follows:**

A person who brokers, coordinates, facilitates, or in any other way arranges for the purchase, sale, use, or enjoyment of tangible personal property, items, property, or goods under s. 77.52(1) (b), (c), or (d), or services under sub. (2) is liable for the tax imposed under this section on the sales price it charges to the purchaser of such property, items, goods, or services, including any charges to such purchaser for brokering, coordinating, facilitating, or arranging the sale, use, or enjoyment of such property, items, goods, or services.

**Create sec. 77.52(14)(c), Wis. Stats., as follows:**

A marketplace provider shall obtain and maintain exemption certificates from purchasers claiming exemptions for sales facilitated on behalf of a marketplace seller. The marketplace provider shall make the exemption certificates available to marketplace sellers upon request by the marketplace seller.

✓ **Create sec. 77.61(21), Wis. Stats., as follows:**

(a) A marketplace provider shall collect and remit tax on all sales facilitated on behalf of marketplace sellers. The marketplace seller is liable for tax on sales facilitated by the marketplace provider if the marketplace provider fails to remit the correct amount of tax.

(b) A marketplace provider is not liable for sales and use taxes on transactions that the provider facilitates if the failure to collect and remit the correct amount of tax was due to incorrect information given to the marketplace provider by the marketplace seller.

✓ **Amend sec. 66.0615(1m)(f)2., Wis. Stats., as follows:**

Sections 77.51 (12m), ~~(13)~~, (14), (14g), (15a), ~~and (15b)~~, ~~and (17)~~, 77.52 (3), ~~(3m)~~, (13), (14), (18), and (19), 77.522, 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.

✓ **Create sec. 66.0615(1m)(g), Wis. Stats., as follows:**

Section 77.52(3m), as it applies to the taxes under subch. III of ch. 77, applies to the tax imposed under par. (a) by a municipality.

## EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

The effective date is the first day of calendar quarter that is at least three months after day of publication, unless the marketplace provider has been previously notified by the department under the provisions of sec. 77.51(13)(c), Wis. Stats., that they should collect tax on sales made on behalf of 3<sup>rd</sup>-party sellers. The effective date for marketplace providers that have been previously notified by the department is the date of such notice.



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-1887/0  
EKL ..... AMM  
(P1)

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

**FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION**

SA  
XEF  
TWF

No gen.

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

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**GENERAL TAXATION**

→ **Collection of sales tax by marketplace providers**

marketplace

marketplace

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 seller and a buyer, providing a virtual currency used to purchase products from the 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.

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:**

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, 77.58 (1) to (5), (6m), and (7),  
4           77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9), (12) to (15), and (19m), and 77.62,  
5           as they apply to the taxes under subch. III of ch. 77, apply to the tax described under  
6           subd. 1.

History: 1983 a. 189, 514; 1993 a. 263, 467, 491; 1999 a. 9; 1999 a. 150 ss. 565 to 567; Stats. 1999 s. 66.0615; 2003 a. 203; 2005 a. 135; 2007 a. 20; 2009 a. 2; 2011 a. 18, 32; 2013 a. 20; 2015 a. 55, 60, 301; 2017 a. 59.

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

8           ~~66.0615 (1m)~~ (g) Section 77.52 (3m), as it applies to the taxes under subch. III  
9           of ch. 77, shall apply to the tax imposed under par. (a) by a municipality.

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

11          ~~77.51 (7i)~~ "Marketplace provider" means a person who contracts with a <sup>marketplace</sup> seller  
12          to facilitate for consideration the sale of the <sup>marketplace</sup> seller's products through a physical or  
13          electronic marketplace operated by the person and who meets all of the following  
14          conditions:

15               (a) The person engages, directly or through one or more affiliated persons, in  
16               any of the following activities:

17                   1. Transmitting or communicating the offer or acceptance between the <sup>marketplace</sup> seller  
18                   and a buyer.

19                   2. Owning or operating the technology or the electronic or physical  
20                   infrastructure that brings together the <sup>marketplace</sup> seller and a buyer.



1 3. Providing a virtual currency that a buyer is allowed or required to use to  
2 purchase a product from the <sup>marketplace</sup> seller.

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

6 <sup>marketplace</sup> (b) The person engages in any of the following activities with respect to the  
7 seller's products:

8 1. Providing payment processing services.

9 2. Providing fulfillment or storage services.

10 3. Listing products for sale.

11 4. Setting prices.

12 5. Branding sales as those of the marketplace provider.

13 6. Taking orders.

14 7. Advertising and promotion.

15 8. Accepting or assisting with returns and exchanges or providing other types  
16 of customer service.

17 SECTION 4. 77.51 (7j) of the statutes is created to read:

18 ~~77.51 (7j)~~ "Marketplace seller" means a seller who sells products through a  
19 physical or electronic marketplace operated by a marketplace provider.

20 SECTION 5. 77.51 (11d) of the statutes is amended to read: <sup>(7j)</sup>

21 77.51 (11d) For purposes of subs. (1ag), (1f), (3pf), (7i), (7j), and (9p) and ss.  
22 77.52 (20) and (21), 77.522, 77.54 (9g), (51), (52), and (60), and 77.59 (5r), "product"  
23 includes tangible personal property, and items, property, and goods under s. 77.52  
24 (1) (b), (c), and (d), and services.

NOTE: Sub. (11d) is shown as affected by 2017 Wis. Acts 190 and 324 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102; 2003 a. 48; 2005 a. 25, 327, 441, 479; 2007 a. 11, 20, 130; 2009 a. 2 ss. 225 to 345, 389; 2009 a. 12 s. 18; 2009 a. 28 ss. 1830b to 1836h, 1844 to 1846; 2009 a. 276, 330; 2011 a. 208; 2013 a. 20 ss. 1475 to 1484, 1489 to 1491; 2015 a. 55, 170, 361; 2017 a. 17, 59, 190, 324; 2017 a. 365 ss. 111, 112; 2017 a. 366, 368; s. 13.92 (2) (i).

1 SECTION 6. 77.51 (13) (intro.) of the statutes is amended to read:

2 ~~77.51 (13) (intro.) Except as provided in sub. (13b), "retailer" "Retailer"~~  
3 includes:

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102; 2003 a. 48; 2005 a. 25, 327, 441, 479; 2007 a. 11, 20, 130; 2009 a. 2 ss. 225 to 345, 389; 2009 a. 12 s. 18; 2009 a. 28 ss. 1830b to 1836h, 1844 to 1846; 2009 a. 276, 330; 2011 a. 208; 2013 a. 20 ss. 1475 to 1484, 1489 to 1491; 2015 a. 55, 170, 361; 2017 a. 17, 59, 190, 324; 2017 a. 365 ss. 111, 112; 2017 a. 366, 368; s. 13.92 (2) (i).

4 SECTION 7. 77.51 (13) (a) of the statutes is amended to read:

5 77.51 (13) (a) Every seller who makes any sale on the seller's own behalf or on  
6 behalf of another person, regardless of whether the sale is mercantile in nature, of  
7 tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or  
8 (d), or a service specified under s. 77.52 (2) (a).

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102; 2003 a. 48; 2005 a. 25, 327, 441, 479; 2007 a. 11, 20, 130; 2009 a. 2 ss. 225 to 345, 389; 2009 a. 12 s. 18; 2009 a. 28 ss. 1830b to 1836h, 1844 to 1846; 2009 a. 276, 330; 2011 a. 208; 2013 a. 20 ss. 1475 to 1484, 1489 to 1491; 2015 a. 55, 170, 361; 2017 a. 17, 59, 190, 324; 2017 a. 365 ss. 111, 112; 2017 a. 366, 368; s. 13.92 (2) (i).

9 SECTION 8. 77.51 (13) (c) of the statutes is amended to read:

10 ~~77.51 (13) (c)~~ When the department determines that it is necessary for the  
11 efficient administration of this subchapter to regard any salespersons,  
12 representatives, peddlers, marketplace providers, or canvassers as the agents of the  
13 dealers, distributors, marketplace sellers, supervisors, or employers under whom  
14 they operate or from whom they obtain the tangible personal property or items,  
15 property, or goods under s. 77.52 (1) (b), (c), or (d) sold by them, irrespective of  
16 whether they are making the sales on their own behalf or on behalf of such dealers,  
17 distributors, marketplace sellers, supervisors, or employers, the department may so  
18 regard them and may regard the dealers, distributors, marketplace sellers,  
19 supervisors, or employers as retailers for purposes of this subchapter.

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a.

16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102; 2003 a. 48; 2005 a. 25, 327, 441, 479; 2007 a. 11, 20, 130; 2009 a. 2 ss. 225 to 345, 389; 2009 a. 12 s. 18; 2009 a. 28 ss. 1830b to 1836h, 1844 to 1846; 2009 a. 276, 330; 2011 a. 208; 2013 a. 20 ss. 1475 to 1484, 1489 to 1491; 2015 a. 55, 170, 361; 2017 a. 17, 59, 190, 324; 2017 a. 365 ss. 111, 112; 2017 a. 366, 368; s. 13.92 (2) (i).

1           **SECTION 9.** 77.51 (13) (p) 7. of the statutes is created to read:

2           ~~77.51 (13) (p) 7.~~ Whether the seller sells on the seller's own behalf or on behalf  
3 of another person.

4           **SECTION 10.** 77.51 (13) (q) of the statutes is created to read:

5           ~~77.51 (13) (q)~~ A marketplace provider who facilitates, on behalf of a  
6 marketplace seller, sales that are sourced to this state as provided under s. 77.522  
7 of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c),  
8 or (d), or services.

9           **SECTION 11.** 77.51 (13b) of the statutes is repealed.

10           **SECTION 12.** 77.51 (14) (n) 7. of the statutes is created to read:

11           ~~77.51 (14) (n) 7.~~ Whether the seller sells on the seller's own behalf or on behalf  
12 of another person.

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

14           ~~77.51 (17) (g)~~ Whether the seller sells on the seller's own behalf or on behalf  
15 of another person.

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

17           ~~77.52 (3m)~~ A person who brokers, coordinates, facilitates, or arranges for the  
18 purchase, sale, use, or enjoyment of tangible personal property, or items, property,  
19 or goods under s. 77.52 (1) (b), (c), or (d), or services under sub. (2) is liable for the tax  
20 imposed under this section on the sales price the person charges to the purchaser of  
21 the property, items, goods, or services, including any charges for brokering,  
22 coordinating, facilitating, or arranging the sale, use, or enjoyment of the property,  
23 items, goods, or services.



**2019-2020 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1887/Plins

.....

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

5

**DRAFTING INSTRUCTIONS**

✓ **Create sec. 77.51(7i)(a), Wis. Stats., to read:**

(a) "Marketplace provider" means a person that contracts with sellers 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 engages:

1. Directly, or indirectly through one or more affiliated persons, in any of the following:
  - a. Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;
  - b. Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;
  - c. Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or
  - d. Software development or research and development activities related to any of the activities described in par. (b), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

2. In any of the following activities with respect to the seller's products:

- a. Payment processing services;
- b. Fulfillment or storage services;
- c. Listing products for sale;
- d. Setting prices;
- e. Branding sales as those of the marketplace provider;
- f. Order taking;
- g. Advertising or promotion; or
- h. Providing customer service or accepting or assisting with returns or exchanges.

Commented [GJM-D1]: Numeric and alpha organization has been altered but not content.

✓ (b) For purposes of this subsection, "affiliate" or "affiliated person" means a person that, with respect to another person:

1. Has an ownership interest of more than five percent, whether direct or indirect, in that other person; or
2. is related to the other person because a third person, or group of third persons who are affiliated persons with respect to each other, holds an ownership interest of more than five percent, whether direct or indirect, in the related persons.

Commented [GJM-D2]: New addition

✓ **Create sec. 77.51(7j), Wis. Stats., to read:**

"Marketplace seller" means a seller that makes sales through any physical or electronic marketplaces operated by a marketplace provider, regardless of whether the seller is required to be registered with the department.

Commented [GJM-D3]: Re-Defined

✓ **Create sec. 77.52(3m), Wis. Stats., as follows:**

A marketplace provider is liable for the tax imposed under this section on the sales price it charges to the purchaser of tangible personal property, items, property, and goods

under s. 77.52(1) (b), (c), or (d), and taxable services, including any charges to facilitate the sale of such property, items, goods, or services.

Commented [GJM-D4]: Redefined

✓ **Create sec. 77.52(14)(c), Wis. Stats., as follows:**

A marketplace provider shall obtain and maintain exemption certificates from purchasers claiming exemptions for sales facilitated on behalf of a marketplace seller.

Commented [GJM-D5]: Shortened

**Create sec. 77.585(1)(g), Wis. Stats., as follows:**

✓ A marketplace provider that collects and remits tax on sales facilitated on behalf of marketplace sellers as provided in s. 77.61 (21), stats., 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 shall not claim the deduction for the same sale transaction.

**Create sec. 77.585(11), Wis. Stats., as follows:**

✓ A marketplace seller may claim as a deduction on a return under s. 77.58 for the amount of any sales price for which a marketplace provider has notified the marketplace seller that the marketplace provider will collect and remit the taxes to the department as provided in s. 77.61 (21), stats.

**Create sec. 77.61(21), Wis. Stats., as follows:**

(a) A marketplace provider shall collect and remit tax on all sales facilitated on behalf of marketplace sellers.

(b) A marketplace provider that collects and remits tax on behalf of marketplace sellers under par. (a) shall notify the marketplace seller that the marketplace provider will collect and remit the taxes to the department.

1. Upon notification under this paragraph, only the marketplace provider may be audited and held liable for the tax on sales facilitated by the marketplace provider on behalf of the marketplace seller.
2. If the marketplace provider does not notify the marketplace seller under this paragraph, both the marketplace provider and marketplace seller may be audited and held liable for the tax on sales facilitated by the marketplace provider on behalf of the marketplace seller.

(c) Nothing in this subsection affects the obligation of any purchaser to remit use tax on any transaction in which the marketplace provider or marketplace seller did not collect and remit the sales or use tax.

Commented [GJM-D6]: Re-written and reorganized

**Create sec. 77.61(22), Wis. Stats., as follows:**

(a) Upon examination by the department and subject to the limitation in par. (b), a marketplace provider is relieved of liability under this subchapter for the failure to collect tax on a retail sale if the marketplace provider can show to the department's satisfaction all of the following:

1. The retail sale was made solely on behalf of a marketplace seller.
2. The marketplace provider notified the marketplace seller under sub. (21) (b).
3. The retail sale was properly sourced to this state under s. 77.522.

(b) Liability relief for a marketplace provider under par. (a) may not exceed 5 percent of the total tax due for each retail sale and is limited to sales occurring prior to January 1, 2021.

(c) The liability relief under par. (a) does not apply if the failure to collect tax was due to an error in sourcing the sale under s. 77.522.

#### **Local Exposition District Tax Food and Beverage Tax - Administered by DOR**

**Amend sec. 77.982(2), Wis. Stats., as follows:**

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, 77.54 (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), ~~(21)~~, and ~~(22)~~, 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.

#### **Local Exposition District Tax Local Rental Car Tax - Administered by DOR**

**Amend sec. 77.991(2), Wis. Stats., as follows:**

Sections 77.51 (12m), ~~(13)~~, (14), (14g), (15a), and ~~(15b)~~, and ~~(17)~~, 77.52 (1b), (3), (5), (13), (14), (18), and (19), 77.522, 77.58 (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), ~~(21)~~, and ~~(22)~~, 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.

#### **State Rental Vehicle Fee - Administered by DOR**

**Amend sec. 77.9951(2), Wis. Stats., as follows:**

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, 77.58 (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), ~~(21)~~, and ~~(22)~~, 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.



**2019-2021 Legislative Proposal Summary**  
**Wisconsin Department of Revenue**  
**Division of Income, Sales & Excise Tax**

**TITLE:** Marketplace Providers and Lodging Facilitators

**DESCRIPTION OF CURRENT LAW AND PROBLEM**

Sellers make sales to Wisconsin customers through a variety of platforms:

- Retail store
- Phone, fax, or email
- Their own e-commerce website
- A 3<sup>rd</sup> party's e-commerce website (**marketplace provider**)

Marketplace providers allow multiple sellers to sell products on their single platform. The marketplace provider may also sell its own products on the platform. Marketplace providers often do not collect Wisconsin tax on sales of products owned by other sellers.

Wisconsin's law currently provides that marketplace providers are retailers engaged in business in Wisconsin and are liable for Wisconsin sales or use tax on sales in Wisconsin.

- Section 77.51(13g)(c), Wis. Stats., provides that all retailers that sell taxable products and services for storage, use, or other consumption in Wisconsin are engaged in business in Wisconsin, unless otherwise limited by federal law.
- Section 77.51(13)(c), Wis. Stats., provides that a "retailer" includes any representative or salesperson making sales on their own behalf or on behalf of a dealer.

(c) When the department determines that it is necessary for the efficient administration of this subchapter to regard any salespersons, representatives, peddlers or canvassers as the agents of the dealers, distributors, 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, supervisors or employers, the department may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this subchapter. (**Emphasis added**)

The 3<sup>rd</sup>-party seller is also liable for the tax on sales made through a marketplace provider. However, when more than one party is liable for the tax, the liability for the tax is extinguished for both parties when either party remits the tax to the department.

As a retailer, a marketplace provider may collect the tax from the purchaser. Marketplace providers are often in a better position than the 3<sup>rd</sup>-party seller to determine the tax treatment of the transaction and relieve the tax liability for both parties. The marketplace collects transaction details from purchasers, such as the purchaser's name, delivery address, and payment information. This detailed information allows the marketplace to determine whether tax should be collected from the purchaser. Sometimes, this detailed information is not transferred back to the 3<sup>rd</sup>-party seller.

There are some marketplace sellers who do not believe the statutes detailed above are sufficient to require them to collect Wisconsin sales or use tax for 3<sup>rd</sup> party seller's using their

platform. In *Cellar Door North Central, Inc., vs. Wisconsin Department of Revenue* (August 26, 2013), the Dane County Circuit Court acknowledged that two parties may be retailers with respect to the same transaction and both liable for the collection and remittance of Wisconsin sales tax. This was also acknowledged by the Wisconsin Tax Appeals Commission in *NEJA Group, LLC vs. Wisconsin Department of Revenue* (January 13, 2014).

**Note:** Out-of-state sellers without a physical presence in Wisconsin (i.e., remote sellers) are required to collect and remit sales or use tax on sales of taxable products and service delivered into Wisconsin on and after October 1, 2018. Although this may require marketplace providers to collect and remit tax on sales of its own products, they still may not collect and remit tax on sales made on behalf of 3<sup>rd</sup>-party sellers.

## **OTHER STATE LEGISLATION**

Other states, without laws similar to 77.51(13)(c), Wis. Stats, have introduced or enacted legislation requiring the marketplace provider or facilitator to collect the tax or be subject to reporting requirements. The following states have recently enacted laws relating to marketplace providers and facilitators:

- Washington State – (HB 2163, effective January 1, 2018)
  - Remote sellers are required to collect or are subject to the reporting requirements if gross receipts sourced to WA are at least \$10,000.
  - Marketplace facilitators are required to collect or are subject to the reporting requirements if gross receipts, from all sales sourced to WA, whether its own or as an agent of a marketplace seller, are at least \$10,000.
    - Marketplace facilitators are only allowed to use the reporting path (not collect) for the following:
      1. Retail sales by or on behalf of marketplace seller who does not have physical presence in WA.
      2. A marketplace facilitator's own retail sales, if the marketplace facilitator does not have a physical presence in WA.
  - Referrers are also subject to the provisions if the gross income from referral services apportioned to WA, whether or not subject to tax, and from retail sales sourced to WA are at least \$267,000.
  - Law was updated effective October 1, 2018 due to remote seller collection requirements based on the US Supreme Court's decision in *South Dakota v. Wayfair*.
    - Remote businesses with at least \$100,000 in sales or 200 transactions in the current or prior year must register and collect and do not have the notice and reporting option.
- Minnesota – (HF 1, effective July 1, 2019 or sooner if Supreme Court modifies Quill)
  - Law became effective on October 1, 2018 with the US Supreme Court's decision in *South Dakota v. Wayfair*.
  - Definition of "retailer maintaining a place of business in the state" is amended to include sellers who make sales through a marketplace provider operating in MN
  - Marketplace providers include a person facilitating a sale by listing or advertising items for sale or entering into agreement with 3<sup>rd</sup> parties for collecting payments.
  - Small seller exception if taxable sales are less than \$10,000 annually.
- Oklahoma – (HB 1019, effective April 10, 2018, initial election due on July 1, 2018)
  - Requires a marketplace facilitator to collect tax on sales by 3<sup>rd</sup>-party sellers in the marketplace.

- Requires a marketplace facilitator, remote seller, or referrer who had at least \$10,000 in aggregate Oklahoma sales in the preceding 12 calendar months to:
  - File an election with the Tax Commission to obtain a sales tax permit and collect and remit tax on tangible personal property, or
  - Comply with the notice and reporting requirements.
- South Dakota – (SB 2, effective March 1, 2019)
  - Requires marketplace providers register, collect, and remit sales tax on all sales it facilitates into South Dakota on behalf of marketplace sellers if the thresholds of 200 or more transactions into South Dakota or \$100,000 or more in sales to South Dakota customers are met.

## RECOMMENDATION FOR ACTION

- A. Clarify current law that provides marketplace providers must collect tax on taxable sales facilitated on behalf of 3rd-party sellers.

Note: Clarification will reverse the effect of *Orbitz, LLC vs. Wisconsin Department of Revenue*, (Wisconsin Court of Appeals, District IV, February 11, 2016). Orbitz is a marketplace provider that sells lodging services on behalf of others. Reversing this decision will treat all marketplace providers the same, regardless of the product or service sold.

- B. Repeal the distribution facility collection exception for marketplace sales made on behalf of 3rd-party sellers where the marketplace operates a distribution facility but no storefront in Wisconsin. All sellers, including marketplace providers, would be subject to the same standards in Wisconsin.

## IMPACT ON JOBS CREATION

Minimal

## FISCAL EFFECT

**Marketplaces** (excludes travel intermediaries such as Orbitz, but includes residential lodging marketplaces): Clarification of the law does not increase tax obligations but does increase state tax collections by an estimated \$50 million in FY20 and \$60 million in FY21 (annualized amounts). Collections for county and stadium taxes will increase by an estimated \$4 million in FY20 and \$4.7 million in FY21.

**Travel Intermediaries** (Orbitz, etc.): Under the proposal, travel intermediaries will be required to collect tax on the sales price paid by the occupant, rather than the contracted rate between the hotel and the travel intermediary. The department estimates state sales tax collections to increase by about \$6.2 million in FY20 and \$7.1 million in FY21 (annualized amounts). Collections for county and stadium taxes will increase by an estimated \$490,000 in FY20 and \$560,000 in FY21.

## DRAFTING INSTRUCTIONS

**Create sec. 77.51(7i)(a), Wis. Stats., to read:**

(a) "Marketplace provider" means a person that contracts with sellers 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 engages:

1. Directly, or indirectly through one or more affiliated persons, in any of the following:
  - a. Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;
  - b. Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;
  - c. Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or
  - d. Software development or research and development activities related to any of the activities described in par. (b), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and
2. In any of the following activities with respect to the seller's products:
  - a. Payment processing services;
  - b. Fulfillment or storage services;
  - c. Listing products for sale;
  - d. Setting prices;
  - e. Branding sales as those of the marketplace provider;
  - f. Order taking;
  - g. Advertising or promotion; or
  - h. Providing customer service or accepting or assisting with returns or exchanges.

(b) For purposes of this subsection, "affiliate" or "affiliated person" means a person that, with respect to another person:

1. Has an ownership interest of more than five percent, whether direct or indirect, in that other person; or
2. is related to the other person because a third person, or group of third persons who are affiliated persons with respect to each other, holds an ownership interest of more than five percent, whether direct or indirect, in the related persons.

**Create sec. 77.51(7j), Wis. Stats., to read:**

"Marketplace seller" means a seller that makes sales through any physical or electronic marketplaces operated by a marketplace provider, regardless of whether the seller is required to be registered with the department.

**Amend sec. 77.51(11d), Wis. Stats., as follows:**

For purposes of subs. (1ag), (1f), (3pf), (7i), 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.

**Amend sec. 77.51(13)(intro), Wis. Stats., to read:**

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

**Amend sec. 77.51(13)(a), Wis. Stats., as follows:**

Every seller who makes any sale, on its 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)."

**Amend sec. 77.51(13)(c), Wis. Stats., to read:**

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), or taxable services 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.

**Create sec. 77.51(13)(p)7., Stats., as follows:**

Whether the seller sells on its own behalf or on behalf of another person.

**Create sec. 77.51(13)(q), Wis. Stats., to read:**

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

**Repeal sec. 77.51(13b), Wis. Stats.**

**Create sec. 77.51(14)(n)7., Wis. Stats., as follows:**

Whether the seller sells on its own behalf or on behalf of another person.

**Create sec. 77.51(17)(g), Wis. Stats., as follows:**

Whether the seller sells on its own behalf or on behalf of another person.

**Create sec. 77.52(3m), Wis. Stats., as follows:**

A marketplace provider is liable for the tax imposed under this section on the sales price it charges to the purchaser of tangible personal property, items, property, and goods under s. 77.52(1) (b), (c), or (d), and taxable services, including any charges to facilitate the sale of such property, items, goods, or services.

**Create sec. 77.52(14)(c), Wis. Stats., as follows:**

A marketplace provider shall obtain and maintain exemption certificates from purchasers claiming exemptions for sales facilitated on behalf of a marketplace seller.

**Create sec. 77.585(1)(g), Wis. Stats., as follows:**

A marketplace provider that collects and remits tax on sales facilitated on behalf of marketplace sellers as provided in s. 77.61 (21), stats., 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 shall not claim the deduction for the same sale transaction.

**Create sec. 77.585(11), Wis. Stats., as follows:**

A marketplace seller may claim as a deduction on a return under s. 77.58 for the amount of any sales price for which a marketplace provider has notified the marketplace seller that the marketplace provider will collect and remit the taxes to the department as provided in s. 77.61 (21), stats.

**Create sec. 77.61(21), Wis. Stats., as follows:**

(a) A marketplace provider shall collect and remit tax on all sales facilitated on behalf of marketplace sellers.

(b) A marketplace provider that collects and remits tax on behalf of marketplace sellers under par. (a) shall notify the marketplace seller that the marketplace provider will collect and remit the taxes to the department.

1. Upon notification under this paragraph, only the marketplace provider may be audited and held liable for the tax on sales facilitated by the marketplace provider on behalf of the marketplace seller.
2. If the marketplace provider does not notify the marketplace seller under this paragraph, both the marketplace provider and marketplace seller may be audited and held liable for the tax on sales facilitated by the marketplace provider on behalf of the marketplace seller.

(c) Nothing in this subsection affects the obligation of any purchaser to remit use tax on any transaction in which the marketplace provider or marketplace seller did not collect and remit the sales or use tax.

**Create sec. 77.61(22), Wis. Stats., as follows:**

(a) Upon examination by the department and subject to the limitation in par. (b), a marketplace provider is relieved of liability under this subchapter for the failure to collect tax on a retail sale if the marketplace provider can show to the department's satisfaction all of the following:

1. The retail sale was made solely on behalf of a marketplace seller.
2. The marketplace provider notified the marketplace seller under sub. (21) (b).
3. The retail sale was properly sourced to this state under s. 77.522.

(b) Liability relief for a marketplace provider under par. (a) may not exceed 5 percent of the total tax due for each retail sale and is limited to sales occurring prior to January 1, 2021.

(c) The liability relief under par. (a) does not apply if the failure to collect tax was due to an error in sourcing the sale under s. 77.522.

**Local Exposition District Room Tax (Milwaukee County) and Additional Room Tax (City of Milwaukee) – Administered by DOR**

**Amend sec. 66.0615(1m)(f)2., Wis. Stats., as follows:**

Sections 77.51 (12m), (13), (14), (14g), (15a), ~~and (15b)~~, and (17), 77.52 (3), (3m), (13), (14), (18), and (19), 77.522, 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)~~, (21), and (22), and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to the tax described under subd. 1.

**Local Room Tax – Administered by Municipalities**

**Create sec. 66.0615(1m)(g), Wis. Stats., as follows:**

Sections 77.52(3m) and 77.62 (21) and (22) as it applies to the taxes under subch. III of ch. 77, applies to the tax imposed under par. (a) by a municipality.

**Local Exposition District Tax Food and Beverage Tax - Administered by DOR**

**Amend sec. 77.982(2), Wis. Stats., as follows:**

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, 77.54 (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)~~, (21), and (22), 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.

**Local Exposition District Tax Local Rental Car Tax - Administered by DOR**

**Amend sec. 77.991(2), Wis. Stats., as follows:**

Sections 77.51 (12m), (13), (14), (14g), (15a), ~~and (15b)~~, and (17), 77.52 (1b), (3), (5), (13), (14), (18), and (19), 77.522, 77.58 (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)~~, (21), and (22), 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.

**State Rental Vehicle Fee – Administered by DOR**

**Amend sec. 77.9951(2), Wis. Stats., as follows:**

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, 77.58 (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)~~, (21), and (22), 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.

#### **EFFECTIVE DATE AND/OR INITIAL APPLICABILITY**

The effective date is the first day of calendar quarter that is at least three months after day of publication, unless the marketplace provider has been previously notified by the department under the provisions of sec. 77.51(13)(c), Wis. Stats., that they should collect tax on sales made on behalf of 3<sup>rd</sup>-party sellers. The effective date for marketplace providers that have been previously notified by the department is the date of such notice.

#### **INTERESTED/AFFECTED PARTIES**

Marketplace providers, marketplace sellers, and Wisconsin purchasers.

#### **DOR CONTACT PERSON**

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**PREPARED BY:** David Steines / Nate Weber

**Date:** February 18, 2019





State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-1887/P1  
EKL:amn

P2

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

**FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION**

SA ✓  
Xref

1 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 marketplace seller to facilitate the sale of the marketplace seller's products through a physical or electronic marketplace operated by the person and who engages in certain activities with respect to the marketplace 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  
↑ 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.

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*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, 77.58 (1) to (5), (6m), and (7),  
4           77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9), (12) to (15), and (19m), and 77.62,  
5           as they apply to the taxes under subch. III of ch. 77, apply to the tax described under  
6           subd. 1.

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

8           66.0615 (1m) (g) Section 77.52 (3m), as it applies to the taxes under subch. III  
9           of ch. 77, shall apply to the tax imposed under par. (a) by a municipality.

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

11          (1a) 77.51 (7i) "Marketplace provider" means a person who contracts with a  
12          marketplace seller to facilitate for consideration the sale of the marketplace seller's  
13          products through a physical or electronic marketplace operated by the person and  
14          who meets all of the following conditions:

15          (1) (a) The person engages, directly or through one or more affiliated persons, in  
16          any of the following activities:

17          (a) ①. Transmitting or communicating the offer or acceptance between the  
18          marketplace seller and a buyer.

19          (b) ②. Owning or operating the technology or the electronic or physical  
20          infrastructure that brings together the marketplace seller and a buyer.

1 <sup>(c)</sup> 3. Providing a virtual currency that a buyer is allowed or required to use to  
2 purchase a product from the marketplace seller.

3 <sup>(d)</sup> 4. Developing software or conducting research and development for an activity  
4 described in par. (b) that is directly related to a physical or electronic marketplace  
5 operated by the person or an affiliated person.

6 <sup>(2.)</sup> (b) The person engages in any of the following activities with respect to the  
7 marketplace seller's products:

8 <sup>(a)</sup> 1. Providing payment processing services.

9 <sup>(b)</sup> 2. Providing fulfillment or storage services.

10 <sup>(c)</sup> 3. Listing products for sale.

11 <sup>(d)</sup> 4. Setting prices.

12 <sup>(e)</sup> 5. Branding sales as those of the marketplace provider.

13 <sup>(f)</sup> 6. Taking orders.

14 <sup>(g)</sup> 7. Advertising and promotion.

15 <sup>(h)</sup> 8. Accepting or assisting with returns and exchanges or providing other types  
16 of customer service.

INS 3-17 →

17 **SECTION 4.** 77.51 (7j) of the statutes is created to read:

18 77.51 (7j) "Marketplace seller" means a seller who sells products through a  
19 physical or electronic marketplace operated by a marketplace provider.

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

21 77.51 (11d) For purposes of subs. (1ag), (1f), (3pf), (7i), (7j), and (9p) and ss.  
22 77.52 (20) and (21), 77.522, 77.54 (9g), (51), (52), and (60), and 77.59 (5r), "product"  
23 includes tangible personal property, and items, property, and goods under s. 77.52  
24 (1) (b), (c), and (d), and services.

25 **SECTION 6.** 77.51 (13) (intro.) of the statutes is amended to read:

*, regardless of whether the seller is required to be registered with  
the department*

1           77.51 (13) (intro.) ~~Except as provided in sub. (13b), “retailer”~~ “Retailer”  
2 includes:

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

4           77.51 (13) (a) Every seller who makes any sale on the seller’s own behalf or on  
5 behalf of another person, regardless of whether the sale is mercantile in nature, of  
6 tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or  
7 (d), or a service specified under s. 77.52 (2) (a).

8           **SECTION 8.** 77.51 (13) (c) of the statutes is amended to read:

9           77.51 (13) (c) When the department determines that it is necessary for the  
10 efficient administration of this subchapter to regard any salespersons,  
11 representatives, peddlers, marketplace providers, or canvassers as the agents of the  
12 dealers, distributors, marketplace sellers, supervisors, or employers under whom  
13 they operate or from whom they obtain the tangible personal property or items,  
14 property, or goods under s. 77.52 (1) (b), (c), or (d) sold by them, irrespective of  
15 whether they are making the sales on their own behalf or on behalf of such dealers,  
16 distributors, marketplace sellers, supervisors, or employers, the department may so  
17 regard them and may regard the dealers, distributors, marketplace sellers,  
18 supervisors, or employers as retailers for purposes of this subchapter.

19           **SECTION 9.** 77.51 (13) (p) 7. of the statutes is created to read:

20           77.51 (13) (p) 7. Whether the seller sells on the seller’s own behalf or on behalf  
21 of another person.

22           **SECTION 10.** 77.51 (13) (q) of the statutes is created to read:

23           77.51 (13) (q) A marketplace provider who facilitates, on behalf of a  
24 marketplace seller, sales that are sourced to this state as provided under s. 77.522

1 of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c),  
2 or (d), or services.

3 SECTION 11. 77.51 (13b) of the statutes is repealed.

4 SECTION 12. 77.51 (14) (n) 7. of the statutes is created to read:

5 77.51 (14) (n) 7. Whether the seller sells on the seller's own behalf or on behalf  
6 of another person.

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

8 77.51 (17) (g) Whether the seller sells on the seller's own behalf or on behalf  
9 of another person.

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

*marketplace provider*

11 77.52 (3m) A person who brokers, coordinates, facilitates, or arranges for the  
12 purchase, sale, use, or enjoyment of tangible personal property, or items, property,  
13 or goods under s. 77.52 (1) (b), (c), or (d), or services under sub. (2) is liable for the tax  
14 imposed under this section on the sales price the person charges to the purchaser of  
15 the property, items, goods, or services; including any charges for brokering,  
16 coordinating, facilitating, or arranging the sale, use, or enjoyment of the property,  
17 items, goods, or services.

*marketplace provider*

18 SECTION 15. 77.52 (14) (c) of the statutes is created to read:

19 77.52 (14) (c) A marketplace provider shall obtain and maintain each  
20 exemption certificate from a purchaser claiming an exemption for a sale facilitated  
21 by the marketplace provider on behalf of a marketplace seller. The marketplace  
22 provider shall make the exemption certificate available to the marketplace seller  
23 upon request by the marketplace seller.

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

1           **77.523 Liability of marketplace providers and sellers.** A marketplace  
 2 provider shall collect and remit tax on each sale facilitated on behalf of a marketplace  
 3 seller. A marketplace provider is not liable for sales or use tax on a sale that the  
 4 marketplace provider facilitates if the failure to collect and remit the correct amount  
 5 of tax was due to incorrect information given to the marketplace provider by the  
 6 marketplace seller. A marketplace seller is liable for sales or use tax on a sale  
 7 facilitated by a marketplace provider if the marketplace provider fails to remit the  
 8 correct amount of tax.

INS 6-9 →

**SECTION 9437. Effective dates; Revenue.**

10           (1) SALES TAX COLLECTION BY MARKETPLACE PROVIDERS. The treatment of ss.  
 11 66.0615 (1m) (f) 2. and (g), 77.51 (7i), (7j), (11d), (13) (intro.), (a), (c), (p) 7., and (q),  
 12 (13b), (14) (n) 7., and (17) (g), 77.52 (3m) and (14) (c), and 77.523 takes effect on the  
 13 first day of the calendar quarter that is at least 3 months after publication.

(END)

, 77.585 (1g) and (11), 77.982 (2), 77.991 (2), and 77.9951 (2)

1 INS 3-17

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

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

6 2. The person is related to the other person because a <sup>3rd</sup> (third) person, or group  
7 of <sup>3rd</sup> (third) persons who are affiliated persons with respect to each other, holds an  
8 ownership interest of more than 5 percent, whether direct or indirect, in the related  
9 person.

10 INS 6-9

11 <sup>B</sup> **77.523 Liability of marketplace providers and sellers.** <sup>B</sup> (1) A marketplace  
12 provider shall collect and remit tax on a sale facilitated on behalf of a marketplace  
13 seller.

14 <sup>B</sup> (2) A marketplace provider who collects and remits tax on a sale under sub. (1)  
15 shall notify the marketplace seller that the marketplace provider is collecting and  
16 remitting the tax. Upon <sup>(the)</sup> notification, only the marketplace provider may be  
17 audited and held liable for tax on the sale. If notification is not provided, the  
18 marketplace provider and marketplace seller may be audited and held liable for tax  
19 on the sale.

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

1 (a) 1. The sale was made solely on behalf of a marketplace seller.

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

3 (c) 3. The retail sale was properly sourced to this state under s. 77.522.

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

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

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

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

12 SECTION 1. 77.585 (1g) of the statutes is created to read:

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

19 SECTION 2. 77.585 (11) of the statutes is created to read:

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

23 SECTION 3. 77.982 (2) of the statutes is amended to read:

24 77.982 (2) Sections 77.51 (1f), (3pf), (9p), (12m), (13), (14), (14g), (15a), and  
25 (15b), and (17), 77.52 (1b), (3), (5), (13), (14), and (18) to (23), 77.522, 77.54 (51) and

77.523



1 (52), 77.58 (1) to (5), (6m), and (7), 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (6), (8),  
 2 (9), (12) to (15), <sup>plain</sup> and (19m), (21), and (22), and 77.62, as they apply to the taxes under  
 3 subch. III, apply to the tax under this subchapter. Section 77.73, as it applies to the  
 4 taxes under subch. V, applies to the tax under this subchapter.

History: 1993 a. 263, 491; 1999 a. 9; 2003 a. 203; 2007 a. 20; 2009 a. 2, 330; 2011 a. 18, 68; 2013 a. 20; 2015 a. 60; s. 35.17 correction in (2).

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

6 77.991 (2) Sections 77.51 (12m), (13), (14), (14g), (15a), and (15b), and (17),  
 7 77.52 (1b), (3), (5), (13), (14), (18), and (19), 77.522, <sup>77.523</sup> 77.58 (1) to (5), (6m), and (7),  
 8 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (6), (8), (9), (12) to (15), <sup>plain</sup> and (19m), (21), and  
 9 (22), and 77.62, as they apply to the taxes under subch. III, apply to the tax under  
 10 this subchapter. Section 77.73, as it applies to the taxes under subch. V, applies to  
 11 the tax under this subchapter. The renter shall collect the tax under this subchapter  
 12 from the person to whom the passenger car is rented.

History: 1993 a. 263; 1999 a. 9; 2003 a. 203; 2007 a. 20; 2009 a. 2, 330; 2011 a. 18, 68; 2013 a. 20; s. 35.17 correction in (2).

13 **SECTION 5.** 77.9951 (2) of the statutes is amended to read:

14 77.9951 (2) Sections 77.51 (3r), (12m), (13), (14), (14g), (15a), and (15b), and  
 15 (17), 77.52 (1b), (3), (5), (13), (14), (18), and (19), 77.522, <sup>77.523</sup> 77.58 (1) to (5), (6m), and (7),  
 16 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (6), (8), (9), (12) to (15), <sup>plain</sup> and (19m), (21) and  
 17 (22), and 77.62, as they apply to the taxes under subch. III, apply to the fee under this  
 18 subchapter. The renter shall collect the fee under this subchapter from the person  
 19 to whom the vehicle is rented.

History: 1997 a. 27; 2007 a. 20; 2009 a. 2, 28, 330; 2011 a. 18, 68; 2013 a. 20; s. 35.17 correction in (2).

## Lunder, Erika

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**From:** Gilchrist, John M - DOA  
**Sent:** Wednesday, February 20, 2019 3:19 PM  
**To:** Lunder, Erika  
**Subject:** FW: Marketplace Provider ASAP  
**Attachments:** 19-1887\_P2 Marketplace.pdf

**Importance:** High

Good afternoon Erika,

Below are DOR's requested edits. They appear to be simple changes.

Respectfully,  
John Gilchrist  
Executive Policy & Budget Analyst  
State Budget Office  
Wisconsin Department of Administration  
608-266-7597

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**From:** Weber, Nathaniel R - DOR  
**Sent:** Wednesday, February 20, 2019 3:13 PM  
**To:** Gilchrist, John M - DOA <John.Gilchrist@wisconsin.gov>  
**Cc:** Schmidt, Robert K - DOR <RobertK1.Schmidt@wisconsin.gov>; Hardt, Diane L - DOR <Diane.Hardt@wisconsin.gov>  
**Subject:** FW: Marketplace Provider ASAP  
**Importance:** High

Hi John,

Below is our review of 19-887/P2. Let us know if there are further questions.

Thanks,

***Nate Weber, CPA***

Director, Office of Technical Services  
Division of Income, Sales & Excise Tax  
Wisconsin Department of Revenue  
PO Box 8933 Mail Stop 6-40  
Madison, WI 53708-8933  
Phone: 608-266-8025

### LRB 19-1887/P2 Marketplaces

- Section 1 – 66.0615(1m)(f)2.
  - ✓ ○ Add newly created liability provisions in sec. 77.523

- Section 2 – 66.0615(1m)(g)
  - Add newly created liability provisions in sec. 77.523

- Section 3 – Definition of "marketplace provider"

- A marketplace provider does not contract with "marketplace sellers", it contracts with sellers. A seller isn't a "marketplace seller" until it actually makes sales through a marketplace. Throughout the definition, "seller" should be used instead of "marketplace seller."
- The definition should make it clear that consideration is received for providing facilitation services, even if the consideration is deducted from the amount of money transferred from the marketplace provider to the marketplace seller relating to the sales transaction.

**Suggested changes:** "Marketplace provider" means a person who contracts with a marketplace sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the marketplace 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 indirectly through one or more affiliated persons, in any of the following activities:
  - a. Transmitting or communicating the offer or acceptance between the marketplace seller and a buyer.
  - b. Owning or operating the technology or the electronic or physical infrastructure that brings together the marketplace seller and a buyer.
  - c. Providing a virtual currency that a buyer is allowed or required to use to purchase a product from the marketplace 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 marketplace 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 and or promotion.
  - h. Accepting or assisting with returns and or exchanges or providing other types of customer service.

- Section 16 – Liability of marketplace providers and sellers

- Sec. 77.523(7) – purchaser's obligation to remit use tax is extinguished when the marketplace provider or marketplace seller collects and remits the tax.

**Suggested change:** 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 9437 – Effective dates; Revenue.

- Provide that the effective date for marketplace providers that were previously notified by the department of the marketplace provider's collection requirement is the date of such notice.

**Suggested change:** (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, unless the marketplace provider has been previously notified by the department under the provisions of sec.

*act on which*  
77.51(13)(c), Wis. Stats., that they should collect tax on sales made on behalf of 3rd-party sellers. The effective date for marketplace providers that have been previously notified by the department is the date of such notice.

**From:** Gilchrist, John M - DOA

**Sent:** Wednesday, February 20, 2019 11:10 AM

**To:** Hardt, Diane L - DOR <[Diane.Hardt@wisconsin.gov](mailto:Diane.Hardt@wisconsin.gov)>; Schmidt, Robert K - DOR <[RobertK1.Schmidt@wisconsin.gov](mailto:RobertK1.Schmidt@wisconsin.gov)>;

Weber, Nathaniel R - DOR <[Nathaniel.Weber@wisconsin.gov](mailto:Nathaniel.Weber@wisconsin.gov)>

**Subject:** Marketplace Provider

Good morning everyone,

Attached is the latest copy of the marketplace-provider draft language. Please share with us any changes or reservations that you have as soon as you can.

Respectfully,

John Gilchrist

Executive Policy & Budget Analyst

State Budget Office

Wisconsin Department of Administration

608-266-7597