2019 ASSEMBLY BILL 251

May 31, 2019 - Introduced by Representatives RODRIGUEZ, KATSMA, KERKMAN, MACCO and WITTK, cosponsored by Senators KOYOenga, MARKLEIN, ROTH, WANGGAARD, TIFFANY and KAPENGA. Referred to Committee on Ways and Means.

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

Analysis by the Legislative Reference Bureau

Current law requires the Department of Revenue to determine the amount of additional revenue collected from the state sales and use tax from October 1, 2018, to September 30, 2019, as a result of the U.S. Supreme Court decision that expands the state’s authority to collect such taxes from out-of-state retailers. See, South Dakota v. Wayfair, Inc., 585 U.S. ___ (2018). After DOR makes that determination,
the Department of Administration, in consultation with DOR, must then determine how much the individual income tax rates may be reduced for the 2019 taxable year in order to decrease individual income tax revenue by the amount of additional sales and use tax revenue. If a review by the Legislative Audit Bureau results in a redetermination of the rates, the Joint Committee on Finance decides which rates to apply. The reduction in rates only applies to 2019.

This bill makes the rate reductions determined for 2019 applicable to all subsequent taxable years, except that the second individual income tax rate listed in each tax bracket would change again in 2020. The bill requires DOR to determine the amount of additional revenue collected from the sales and use tax from October 1, 2019, to September 30, 2020, as a result of the Supreme Court decision. DOA, in consultation with DOR, would then use that determination to determine how much the second individual income tax rate listed in each tax bracket may be reduced in the 2020 taxable year. Those reduced rates would apply in 2020 and in each year thereafter. The bill also requires DOR to make its determination of additional sales and use tax revenue based on the sales and use taxes collected from out-of-state retailers and marketplace providers.

The bill requires that marketplace providers collect and remit sales tax on sales facilitated on behalf of marketplace sellers. For purposes of the bill, a “marketplace provider” is a person who facilitates a retail sale by a seller by listing or advertising for sale, in any manner, the seller’s products or taxable services and through agreements or arrangements with third parties, directly or indirectly, who are collecting payment from the purchaser and transmitting that payment to the seller. 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 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:

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 subdiv. 1.

SECTION 2. 66.0615 (1m) (g) of the statutes is created to read:
66.0615 (1m) (g) Sections 77.52 (3m) and 77.523, as they apply to the taxes under subch. III of ch. 77, shall apply to the tax imposed under par. (a) by a municipality.

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

73.03 (71) (a) (intro.) To determine the amount of additional revenue reported to the department from the taxes imposed under subch. III of ch. 77 as a result of the United States Supreme Court decision that expands the state’s authority to require out-of-state retailers and marketplace providers, as defined in s. 77.51 (7i), to collect and remit the taxes imposed under subch. III of ch. 77 on purchases by Wisconsin residents during the period beginning following periods:

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

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

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

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

73.03 (71) (b) 1. After the department makes the determination under par. (a) 1., the department shall determine how much the individual income tax rates under s. 71.06 may be reduced for the taxable year ending on December 31, 2019, in order to decrease individual income tax revenue by the amount determined under par. (a) 1. For purposes of this paragraph, the tax rate reductions shall be calculated in proportion to the share of gross tax attributable to each of the tax brackets under s. 71.06 in effect during the most recently completed taxable year.

**SECTION 6.** 73.03 (71) (b) 2. of the statutes is created to read:
73.03 (71) (b) 2. After the department makes the determination under par. (a) 2., the department shall determine how much the 2nd individual income tax rate listed in each bracket under s. 71.06, as affected by subd. 1., may be reduced for the taxable year ending on December 31, 2020, in order to decrease individual income tax revenue by the amount determined under par. (a) 2.

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

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

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

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

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

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

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

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

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

77.51 (7i) “Marketplace provider” means any person who facilitates a retail sale by a seller by listing or advertising for sale by the seller, in any manner, tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or a service specified under s. 77.52 (2) (a) and through agreements or arrangements with 3rd parties, directly or indirectly, who are collecting payment from the purchaser and transmitting that payment to the seller, regardless of whether the person receives
compensation or other consideration in exchange for the services provided by the
person.

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

77.51 (7j) “Marketplace seller” means a seller who sells products through a
physical or electronic marketplace operated by a marketplace provider, regardless
of whether the seller is required to be registered with the department.

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

77.51 (11d) For purposes of subs. (1ag), (1f), (3pf), (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 14. 77.51 (13) (intro.) of the statutes is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A marketplace provider whose only activities are facilitating sales of services on behalf of marketplace sellers operating under a shared hotel, motel, or restaurant brand name, may submit an application to the department to request a waiver from collecting and remitting tax on sales facilitated on behalf of marketplace sellers. The application shall include the name and address of all marketplace sellers selling or furnishing such services in this state, the marketplace seller's sales or use tax permit number obtained under sub. (7) or 77.53 (9), and any other information the department requires. The department may grant the waiver if it is satisfied that the tax due under this chapter is collected and remitted by the marketplace sellers. A marketplace provider that is granted the waiver must, within 60 days from a written request by the department, provide the name and address of all marketplace sellers selling or furnishing such services in this state, the marketplace seller’s sales or use tax permit number obtained under sub. (7) or 77.53 (9), and any other information the department requires. In this paragraph, “hotel” and “motel” have the meaning given in sub. (2) (a) 1. and “restaurant” has the meaning given in s. 97.01 (14g).

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

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

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

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

(2) A marketplace provider who collects and remits tax on a sale under sub. (1)
shall notify the marketplace seller that the marketplace provider is collecting and
remitting the tax. 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 sub.
(5), 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) A marketplace provider is relieved of liability under this section for failure
to collect and remit the correct amount of tax to the extent that the marketplace
provider demonstrates to the satisfaction of the department that the error is due to
insufficient or incorrect information given to the marketplace provider by the
marketplace seller, except that this subsection does not apply if the marketplace
provider and the marketplace seller are related entities, as defined in s. 71.01 (9am).

(5) The relief from liability under subs. (3) and (4) may not exceed the following
amounts:

(a) For 2019, 5 percent of the tax due for that year.

(b) For 2020, 5 percent of the tax due for that year.

(c) For 2021, 3 percent of the tax due for that year.
(d) For 2022, and for each year thereafter, 0 percent of the tax due for that year.

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

(7) No person may bring a class action against a marketplace provider in any court of this state on behalf of consumers arising from or in any way related to an overpayment of sales or use tax collected on sales facilitated by the marketplace provider, regardless of whether that claim is characterized as a claim for a refund. This subsection does not affect a person’s ability to claim a refund as provided under s. 77.59.

SECTION 25. 77.585 (1g) of the statutes is created to read:

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

SECTION 26. 77.585 (11) of the statutes is created to read:

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

SECTION 27. 77.982 (2) of the statutes is amended to read:

77.982 (2) Sections 77.51 (1f), (3pf), (9p), (12m), (13), (14), (14g), (15a), and (15b), and (17), 77.52 (1b), (3), (5), (13), (14), and (18) to (23), 77.522, 77.523, 77.54 (51) and (52), 77.58 (1) to (5), (6m), and (7), 77.585, 77.59, 77.60, 77.61 (2), (3m), (5),
SECTION 27. 77.62, as they apply to the taxes under subch. III, apply to the tax under this subchapter.  Section 77.73, as it applies to the taxes under subch. V, applies to the tax under this subchapter.

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

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

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

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

SECTION 30. Effective date.

(1) Sales tax collection by marketplace providers.  This treatment of ss. 66.0615 (1m) (f) 2. and (g), 77.51 (7i), (7j), (11d), (13) (intro.), (a), (c), (p) 7., and (q), (13b), (14) (n) 7., and (17) (g), 77.52 (3m) and (14) (c), 77.523, 77.585 (1g) and (11), 77.982 (2), 77.991 (2), and 77.9951 (2) takes effect on the first day of the calendar quarter that is at least 3 months after publication.

(END)