

**WISCONSIN DEPARTMENT OF REVENUE
DIVISION OF INCOME, SALES, AND EXCISE TAX**

NOTICE OF PROPOSED GUIDANCE DOCUMENTS

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance documents listed in the table below.

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

DEADLINE FOR SUBMISSION

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

Document Number	Document Title
100272	Marketplace Seller Common Questions

State of Wisconsin
Department of Revenue

Marketplace Seller Common Questions

This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats.

1. Who is a marketplace seller?
2. Is a marketplace seller required to register if all sales are made through a marketplace provider?
3. Is a marketplace seller liable for the tax on sales facilitated by a marketplace provider?
4. If a marketplace provider does not notify the marketplace seller that it is collecting and remitting, is the marketplace seller liable for the tax?
5. How does a marketplace seller report its sales if it makes Wisconsin sales on its own and through a marketplace provider?
6. Is the marketplace seller required to maintain exemption certificates for sales made through the marketplace provider?
7. Can a marketplace seller be audited for sales transactions that are facilitated by a marketplace provider?
8. Can a marketplace seller claim a bad debt deduction on a sale facilitated by a marketplace provider?
9. Will a marketplace seller be notified if a marketplace provider is granted a waiver from collecting and remitting the tax?
10. If a marketplace provider is granted a waiver from collecting and remitting the tax, is the marketplace seller required to collect and remit?
11. Does a nonprofit organization include sales facilitated by a marketplace provider in determining if its sales qualify for the occasional sales exemption?
12. What taxes are marketplace sellers not required to collect and remit if the sale is made through a marketplace provider?

1. **Who is a marketplace seller?**

A marketplace provider cannot sell and ship alcohol beverages directly to Wisconsin consumers, unless the marketplace provider manufactures and bottles wine and holds a wine direct shipper's permit under sec. 125.535, Wis. Stats. Permitted wine direct shippers must pay Wisconsin sales/use and excise taxes on the sale of wine that is shipped directly to Wisconsin consumers (sec. 139.035, Wis. Stats.).

2. Is a marketplace seller required to register if all sales are made through a marketplace provider?

A marketplace seller is not required to register for Wisconsin sales or use tax if all of the marketplace seller's taxable sales in Wisconsin are facilitated by a marketplace provider. However, the marketplace seller is required to register for and collect Wisconsin sales or use tax on its taxable sales in Wisconsin that are not made through a marketplace provider.

3. Is a marketplace seller liable for the tax on sales facilitated by a marketplace provider?

A marketplace seller is not liable for Wisconsin sales or use tax for sales in Wisconsin that are facilitated by a marketplace provider, unless (1) the marketplace provider has been granted a waiver from collecting and remitting by the department, or (2) the marketplace provider can demonstrate that any error in collecting and remitting the tax is due to insufficient or incorrect information provided by the marketplace seller.

4. If a marketplace provider does not notify the marketplace seller that it is collecting and remitting, is the marketplace seller liable for the tax?

A marketplace provider is required to notify the marketplace seller that the marketplace provider is collecting and remitting Wisconsin sales or use tax on all taxable sales, as provided in sec. 77.523(2), Wis. Stats. The marketplace provider is required to collect and remit sales or use tax on all taxable sales in Wisconsin that it facilitates on behalf of a marketplace seller and only the marketplace provider can be audited and held liable for the tax. If the marketplace provider does not notify the marketplace seller, the marketplace seller is not liable for the tax unless one of the exceptions below applies.

Exceptions: The marketplace seller is liable for tax on taxable sales facilitated by a marketplace provider if (1) the marketplace provider has been granted a waiver from collecting and remitting by the department, or (2) the marketplace provider can demonstrate that the error in collecting and remitting the tax is due to insufficient or incorrect information provided by the marketplace seller.

5. How does a marketplace seller report its sales if it makes Wisconsin sales on its own and through a marketplace provider?

The marketplace seller reports all of its sales, including sales facilitated on its behalf by a marketplace provider, on Line 1, "Total Sales," of the marketplace seller's Wisconsin Sales and Use Tax Return ([Form ST-12](#)). The marketplace seller then takes a subtraction on Line 5, "Other," for the sales amounts that are made through the marketplace provider.

Caution: If the marketplace provider has been granted a waiver from collecting and remitting Wisconsin sales or use tax by the department, the marketplace seller is required to collect and remit the tax on its taxable sales in Wisconsin. In this case, the marketplace seller includes the sales facilitated by the marketplace provider in its total sales on Line 1, but does not take a subtraction amount on Line 5, "Other."

6. Is the marketplace seller required to maintain exemption certificates for sales made through the marketplace provider?

The marketplace seller is not required to maintain exemption certificates for sales that are made through the marketplace provider. The marketplace provider is required to obtain and maintain all exemption certificates from purchasers claiming an exemption from Wisconsin sales and use tax, as provided in sec. 77.52(14)(c), Wis. Stats. However, the marketplace seller is required to obtain and maintain exemption certificates from purchasers claiming an exemption on its sales that are not made through a marketplace provider, and on sales made through a marketplace provider that has been granted a waiver from collecting and remitting the tax by the department.

See the answer to [Marketplace Provider Common Question #7](#) for a marketplace provider's requirements for exemption certificates.

7. Can a marketplace seller be audited for sales transactions that are facilitated by a marketplace provider?

Only the marketplace provider can be audited and held liable for Wisconsin sale or use tax on sales facilitated on behalf of a marketplace seller, unless (1) the marketplace provider has been granted a waiver from collecting and remitting the tax by the department, or (2) the marketplace provider can demonstrate that the error in collecting and remitting the tax is due to insufficient or incorrect information provided by the marketplace seller.

8. Can a marketplace seller claim a bad debt deduction on a sale facilitated by a marketplace provider?

If a marketplace provider collects and remits Wisconsin sales or use tax on behalf of a marketplace seller, the marketplace provider is allowed to claim a bad debt deduction on the sales transaction if either the marketplace provider or marketplace seller is eligible to claim a deduction under section 166 of the Internal Revenue Code for the worthless amount of the transaction (sec. 77.585(1g), Wis. Stats.). A marketplace seller cannot claim a bad debt deduction for the same transaction.

See the answer to [Marketplace Provider Common Question #8](#) for additional information on bad debt deductions.

9. Will a marketplace seller be notified if a marketplace provider is granted a waiver from collecting and remitting the tax?

A marketplace seller will be notified by the marketplace provider and/or the department that the marketplace provider has been granted a waiver from collecting and remitting Wisconsin sales or use tax by the department. The notification will identify the marketplace provider that has been granted the waiver and it will indicate that the marketplace seller is liable for the tax on the entire sales price charged to the purchaser for taxable products and services in Wisconsin through that marketplace provider.

10. If a marketplace provider is granted a waiver from collecting and remitting the tax, is the marketplace seller required to collect and remit?

If a marketplace provider has been granted a waiver from collecting and remitting Wisconsin sales or use tax by the department, the marketplace seller is required to collect and remit the tax on the entire sales price charged to the purchaser for taxable sales made in Wisconsin through that marketplace provider.

11. Does a nonprofit organization include sales facilitated by a marketplace provider in determining if its sales qualify for the occasional sales exemption?

A nonprofit organization does **not** include sales facilitated by a marketplace provider in determining if it is engaged in a trade or business for purposes of the occasional sales exemption (sec. 77.54(7m), Wis. Stats.). A nonprofit organization is engaged in a trade or business and required to hold a seller's permit if during the calendar year (1) its sales of taxable products occur on more than 75 days, **and** (2) its taxable receipts exceed \$50,000. Since the marketplace provider is liable for Wisconsin sales or use tax on sales it facilitates on behalf of a nonprofit organization, such sales are not the nonprofit organization's taxable sales or receipts and do not count towards the sales standards.

Note: Additional standards must be met for the nonprofits organization's sales to be exempt occasional sales, see [Fact Sheet 2106](#) for more information.

12. **What taxes are marketplace sellers not required to collect and remit if the sale is made through a marketplace provider?**

Marketplace sellers are not required to collect and remit any of the following taxes administered by the department if the sale is facilitated by a marketplace provider:

- o Wisconsin state sales and use tax
- o County sales and use tax
- o Baseball stadium sales and use tax (ended March 31, 2020)
- o Premier Resort Area Taxes – [Publication 403](#)
- o Local Exposition Taxes – [Publication 410](#)
- o State Rental Vehicle Fee – See Part 11.C. of [Publication 202](#), *Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs*

Municipal room tax – The department does not administer municipal room taxes imposed by Wisconsin municipalities under sec. 66.0615(1m)(a), Wis. Stats. However, Wisconsin law provides that marketplace sellers are not liable for municipal room taxes on sales of lodging facilitated by a marketplace provider, even if the marketplace provider does not collect the tax (see exceptions below). Therefore, the marketplace provider is required to collect the municipal room tax and remit the tax to the Wisconsin municipality. The marketplace seller is liable only for municipal room taxes on sales not made through a marketplace provider.

Exceptions: The marketplace seller is liable for tax on taxable sales facilitated by a marketplace provider if (1) the marketplace provider has been granted a waiver from collecting and remitting by the department, or (2) the marketplace provider can demonstrate that the error in collecting and remitting the tax is due to insufficient or incorrect information provided by the marketplace seller.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations enacted as of June 22, 2020: Subchapter III of Ch. 77, Wis. Stats.

Laws enacted and in effect after June 22, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to June 22, 2020, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

FOR QUESTIONS OR COMMENTS CONTACT:

MS 5-77

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