



WISCONSIN ASSOCIATION
OF CONVENTION
& VISITORS BUREAUS

To: Members of the Senate Committee on Agriculture, Revenue & Financial Institutions
From: Julia Hertel, Executive Director
Date: January 29, 2020
Re: Testimony in support of SB 646

The WI Association of Convention & Visitors Bureaus, which is now doing business as Destinations Wisconsin, is comprised of 39 destination marketing organizations that promote Wisconsin's destinations. Our member Convention and Visitors Bureaus and Chambers of Commerce are the "tourism entities" as defined in the state's room tax law. On behalf of them, I urge you to support SB 646.

Almost all our members receive a portion of their funding from room tax allocations and use those dollars for tourism promotion and tourism development in their destinations. We believe the technical changes recommended in this bill will help ensure that our members and the municipalities they promote receive accurate room tax collections in a timely manner from online lodging marketplaces such as Airbnb, Expedia, VRBO and many more.

While this bill doesn't solve all the growing issues surrounding the collection and remittance of room taxes from online lodging marketplaces, it does take an important step in the right direction. We understand the authors of this legislation are working on potential amendments. While we believe the amendments will improve the bill, our members could change their position depending on the new language.

Our intention is to support language that gives the marketplaces clearer direction on how to comply with our room tax law. They should remit the taxes in a timely manner to municipalities or face penalties.

Room tax collections designated for tourism promotion and tourism development are essential to growing our local and state tourism economies. Some of the dollars are tied to bonding for convention centers or other facilities used by tourists. Some of the dollars are funding essential marketing campaigns that are driving visitors to destinations around the state. And, of course, some of the collections are used by the municipalities to support public education, health and safety programs. If the growing online lodging marketplaces aren't correctly collecting and remitting room taxes, our municipalities and tourism economy will be negatively impacted.

Please support SB 646 to help ensure our municipalities and their tourism entities receive room tax collections in a timely and accurate manner.

PO Box 393, Sun Prairie, WI 53590
608-837-6693 phone
www.destinationswisconsin.com
Jhertel@destinationswisconsin.com

Municipal Room Tax Proposal

DOR Administers Room Tax on Marketplace Sales – Municipalities May Elect Out

- Effective January 1, 2021, DOR will administer the room taxes imposed by all municipalities, but only for sales facilitated by a marketplace provider (marketplace).
- A municipality that imposes room tax may elect to **not** have DOR administer the room tax for marketplace sales, and must provide DOR notice by September 1, 2020 (or 120-day notice).
- If marketplace sales administered by DOR:
 - DOR handles registration, reporting, collection of room tax
 - Municipalities must give DOR 120-day notice for changes in room tax rate
 - Municipalities may have different room tax rates
 - No fee for marketplaces to register with DOR
 - Returns are filed at the same frequency as the sales tax returns
 - Returns filed in the manner prescribed by DOR (electronically through MTA)
 - DOR administered room taxes are distributed to municipalities monthly, minus an administrative fee of 3% for 2021. The administrative fee must be reviewed by the Legislative Fiscal Bureau after 2021 and may be adjusted since ongoing costs will substantially less than start-up costs.
 - DOR will incur one-time costs of approximately \$1,132,590 to program for the new tax type (returns, payments, and distributions), and ongoing costs of approximately \$303,970 for processing, auditing, collecting, and customer service.
 - DOR is authorized to add 4 FTE positions beginning January 1, 2021
 - A portion of the unused administrative fee is returned to the municipalities each year
 - DOR will distribute room taxes reported on returns regardless of what's collected (state will absorb impact of taxes not collected, like other specialty sales taxes)
 - Provides authority for DOR audits, refund determinations, appeals, and collections
- If marketplace sales administered by municipality (opt-out election is made):
 - Municipalities are required to use a DOR developed standardized submission form and with a standard monthly due date for marketplace sales
 - Does not change authority for municipality to audit if tax administered by municipality
- Other provisions that apply:
 - Non-marketplace sales are administered by and reported to municipalities (same as current law)
 - Establishes common tax base between sales tax and room tax (sales price, fees subject to tax, bad debts, returns and allowances, sourcing).
 - Requires municipalities to provide street address information for each parcel within the municipalities, in the form and manner prescribed by DOR.
 - DOR will publish annual room tax reports on DOR's website
 - Repeals lodging marketplace license, but imposes a penalty for lodging marketplaces that do not collect and remit room taxes. Penalty may be imposed by municipality if room tax administered by municipality or may be imposed by DOR if room tax administered by DOR.

Amend title in sec. 20.556(1)(gg), Wis. Stats., to "Administration of local district taxes."

Create sec. 20.566(1)(gh), Wis. Stats., to read:

Administration of room taxes imposed by municipality. The amounts in the schedule for administering the taxes under s. 66.0615(1m)(h). An amount equal to 3 percent of all moneys received from the taxes imposed under s. 66.0615(1m)(h) for the calendar year 2021 shall be credited to this appropriation. The legislative fiscal bureau shall conduct a review and analysis of the annual costs to administer the room taxes by March 1, 2022 and shall adjust the percentage to cover costs to administer for periods thereafter. Notwithstanding s. 20.001 (3) (a), at the end of each fiscal year the unencumbered balance in this appropriation account that exceeds 10 percent of the expenditures from this appropriation during the fiscal year shall be transferred to the appropriation account under s. 20.835 (4) (gh).

Amend title in sec. 20.835(4)(gg), Wis. Stats., to "Local district taxes."

Create sec. 20.835(4)(gh), Wis. Stats., to read:

Room taxes imposed by a municipality. All moneys received from the taxes administered under s. 66.0615(1m)(h), and from the appropriation account under s. 20.566 (1) (gh), for distribution to the municipalities, except that 3 percent of the moneys received from the taxes administered under s. 66.0615(1m)(h) for the calendar year 2021 shall be credited to the appropriation account under s. 20.566 (1) (gh). The percentage shall be reviewed by the legislative fiscal bureau as described in s. 20.566 (1) (gh).

ReNUMBER sec. 59.25(3)(e), Wis. Stats., to 59.25(3)(e)(intro.) and amend as follows:

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

Create sec. 59.25(3)(e)1., Wis. Stats., to read:

1. The complete county tax roll settlement sheets prescribed under s. 70.09(3).

Create sec. 59.25(3)(e)2., Wis. Stats., to read:

2. The complete county tax roll, as that term is used in s. 70.65, in a form and manner prescribed by the department.

Repeal sec. 66.0615(1)(bs), Wis. Stats.

Create sec. 66.0615(1)(bt), Wis. Stats., to read:

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

Repeal sec. 66.0615(1)(de), Wis. Stats.

Amend sec. 66.0615(1)(dk), Wis. Stats., as follows:

(dk) "Short-term rental" means a residential dwelling that is offered for rent for a fee and for fewer than ~~29~~ 30 consecutive days.

Amend sec. 66.0615(1m)(a), Wis. Stats., as follows:

(a) The governing body of a municipality may enact an ordinance, and a district, under par. (e), may adopt a resolution, imposing a tax on the ~~privilege of~~ sales price from selling or furnishing, at retail, except sales for resale, rooms or lodging to transients by hotelkeepers, motel operators, ~~lodging~~ marketplaces, marketplace providers, owners of short-term rentals, and other persons or retailers selling or furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations. A tax imposed under this paragraph may be collected from the consumer or user, but may not be imposed on sales to the federal government and persons listed under s. 77.54 (9a). A tax imposed under this paragraph by a municipality shall be paid to the municipality, except as provided in par. (h), and, with regard to any tax revenue that may not be retained by the municipality, shall be forwarded by the municipality to a tourism entity or a commission if one is created under par. (c), as provided in par. (d). Except as provided in par. (am), a tax imposed under this paragraph by a municipality may not exceed 8 percent of the sales price. Except as provided in par. (am), if a tax greater than 8 percent of the sales price under this paragraph is in effect on May 13, 1994, the municipality imposing the tax shall reduce the tax to 8 percent, effective on June 1, 1994.

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

Sections 77.51 (10), (12m), (13), (13g), (14), (14g), (15a), (15b), and (17), 77.52 (3), (3m), (13), (14), (18), and (19), 77.522, 77.523, 77.53 (7), 77.54, 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 of ch. 77, apply to the tax described under subd. 1.

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

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

Create sec. 66.0615(1m)(h), Wis. Stats., to read:

Except as provided in par. (j), the department of revenue shall administer a room tax imposed by a municipality under par. (a) on sales facilitated by a marketplace provider. The municipality shall provide the department all of the following:

1. A certified copy of the ordinance or resolution with the applicable room tax rate to the secretary of revenue by September 1, 2020. The department will administer the tax on January 1, 2021. A municipality that does not impose the room tax under par. (a) on September 1, 2020 but enacts an ordinance or adopts a resolution to impose the tax after September 1, 2020, shall provide the certified copy of the ordinance or resolution to the secretary of revenue at least 120 days prior to the effective date and the department will administer the tax on the first day of a calendar quarter that is at least 120 day after the municipality has provided the ordinance or resolution.

2. A complete list of all parcels within the municipality's jurisdictional area, including street addresses, 9-digit zip codes and any other information relating to each parcel that the department requires, in the form and manner prescribed by the department, unless such information is provided under s. 59.25(3)(e)1.

3. If the applicable room tax rate or boundaries of the municipality subsequently change, the municipality must submit the information in the form and manner as provided in subd.

1. or 2. A change in room tax rate must be submitted at least 120 days prior to the effective date of such change. The change shall be effective the first day of a calendar quarter.

Create sec. 66.0615(1m)(i), Wis. Stats., to read:

1. The department of revenue shall administer the room tax imposed by a municipality under par. (h) and may take any action, conduct any proceeding, and impose interest and penalties.

2. A return shall be filed, and the tax shall be paid, on the same filing frequency as the marketplace providers's required sales and use tax return that is determined under s. 77.58 (1). Payments and returns shall be filed in the manner prescribed by the department. Returns and payments under this section are timely if they meet the requirements under s. 77.61 (14).

3. Sections 77.51 (10), (12m), (13), (13g), (14), (14g), (15a), (15b), and (17), 77.52 (3), (3m), (13), (14), (18), and (19), 77.522, 77.523, 77.53 (7), 77.54, 77.58 (3) to (5), (6m), and (7), 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (6), (8), (9), (12), (13), (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.

4. From the appropriation under s. 20.835 (4) (gh), the department of revenue shall distribute 97 percent of the taxes reported under this paragraph for each municipality to that municipality no later than the end of the month following the month in which such amounts were reported. From the appropriation under s. 20.835 (4) (gh), beginning with calendar year 2021, unless the legislative fiscal bureau has determined that an adjustment to the percentage is needed, as prescribed s. 20.566 (1) (gh). At the time of distribution the department shall indicate the taxes reported by each taxpayer. The taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments and all other adjustments of the municipal taxes previously distributed. Interest paid on refunds of the tax under this paragraph shall be paid from the appropriation under s. 20.835 (4) (gh) at the rate under s. 77.60 (1) (a). After receiving notice from the department of revenue, a municipality shall reimburse the department for the amount by which any refunds, including interest, of the municipality's taxes that the department pays or allows to in a reporting period exceeds the amount of the municipality's taxes otherwise payable to the municipality under this subdivision for the same or subsequent reporting period. Any municipality that receives a report along with a payment under this subdivision or subd. 3. is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5) and (6).

5. Marketplace providers who are subject to the tax under this subsection, if that tax is administered by the department of revenue, shall register with the department. Any marketplace provider who is required to register, including any person authorized to act on behalf of a marketplace provider who is required to register, who fails to do so is guilty of a misdemeanor.

Create sec. 66.0615(1m)(j), Wis. Stats., to read:

A municipality that imposes a room tax under par. (a), may elect to administer the tax on sales facilitated by a marketplace provider. An election applies if the municipality does all of the following:

1. Provide the secretary of revenue notification by September 1, 2020 that the municipality is electing to administer the room tax on sales facilitated by marketplace providers.
2. If an election is made after September 1, 2020, the date the municipality may begin to administer the tax on marketplace sales no sooner than the first day of a calendar quarter that is at least 120 day after the municipality provides the notification to the secretary of revenue.
3. Provide the information in sub. (1m) (h) 2. and 3. to the department of revenue.
4. Require marketplace providers to report and remit room taxes monthly to the municipality for periods beginning on and after January 1, 2021 on a standard return developed by the department of revenue. The monthly return and tax is due and payable on the last day of the month next succeeding the calendar month. The return shall include the following information:
 - (a) The address of each property subject to the room tax.
 - (b) The total tax collected for each property.

Create sec. 66.0615(1r), Wis. Stats., to read:

(1r) Unless the room tax is administered by the department of revenue as provided in sub. (1m) (h) or the municipality has made the election under sub (1m) (j), persons who are subject to the room tax imposed by a municipality under sub. (1m) shall file returns in the manner and form, and within the time, prescribed by the municipality.

Amend sec. 66.0615(2), Wis. Stats., as follows:

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

- (a) ~~If a~~ A municipality or district has probable cause to believe that the correct amount of room tax has not been assessed or that the tax return is not correct, inspect may inspect and audit the ~~financial~~ records of any person subject to sub. (1m) pertaining to the furnishing or selling of accommodations to determine ~~whether the correct amount of room tax is assessed and whether any room tax return is correct due. A determination under this subsection shall be provided in writing within 4 years after the due date of the return, unless no return has been filed.~~
- (b) Enact a schedule of forfeitures, not to exceed 5 percent of the tax under sub. (1m) or par. (c), to be imposed on any person subject to sub. (1m) who fails to comply with a request to inspect and audit the person's ~~financial~~ records under par. (a).
- (c) Determine the tax under sub. (1m) according to its best judgment if a person required to make a return fails, neglects or refuses to do so for the amount, in the manner and form and within the time prescribed by the municipality or district.

(d) Require each person who is subject to par. (c) to pay an amount of taxes that the municipality or district determines to be due under par. (c) plus interest at the rate of 1 percent per month on the unpaid balance. No refund or modification of the payment determined may be granted until the person files a correct room tax return and permits the municipality or district to inspect and audit his or her ~~financial~~ records under par. (a).

(e) Enact a schedule of forfeitures, not to exceed 25 percent of the room tax due for the previous year under sub. (1m) or par. (c) or \$5,000, whichever is less, to be imposed for failure to pay the tax under sub. (1m).

Create sec. 66.0615(2m), Wis. Stats., to read:

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

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

Amend sec. 66.0615(4)(a), Wis. Stats., as follows:

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

1. The amount of room tax revenue collected by the municipality, not including room tax administered by the department under sub. (1m) (h), and the room tax rate imposed, by the municipality in the previous year.

2. A detailed accounting of the amounts of such revenue that were forwarded in the previous year for tourism promotion and tourism development, specifying the commission or tourism entity that received the revenue. The detailed accounting shall include expenditures of at least \$1,000 made by a commission or a tourism entity.

3. A list of each member of the commission and each member of the governing body of a tourism entity to which the municipality forwarded room tax revenue in the previous year, and the name of the business entity the member owns, operates, or is employed by, if any.

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

(b) The department of revenue shall collect the reports described in par. (a) and shall make them the reports, including the amounts of room tax revenue reported to the department under par. (1m) (h), available to the public.

(c) The department of revenue may impose a penalty of not more than \$3,000 on a municipality that does not submit to the department the reports described in par. (a). A municipality may not use room tax revenue to pay a penalty imposed under this paragraph. The penalty shall be paid to the department of revenue.

(d) Notwithstanding the requirement in par. (a) (intro.), the information specified in par. (a) 4. may be certified and reported to the department only once if the municipality submits the information not later than May 1, 2021. The department shall make such information available to the public annually in the report described in par. (a) (intro.).

Amend sec. 66.0615(5), Wis. Stats., as follows:

(5) A lodging marketplace shall register with the department of revenue, on forms prepared by the department, for a license to collect taxes imposed by the state related to a short-term rental and to collect room taxes imposed by a municipality. After a lodging marketplace applies for and receives such a license, it shall do all of the following:

1. If a short-term rental is rented through the lodging marketplace, collect sales and use taxes from the occupant and forward such amounts to the department of revenue.
2. If a short-term rental that is rented through the lodging marketplace is located in a municipality that imposes a room tax, collect the room tax from the occupant and forward it to the municipality.
3. Notify the owner of a short-term rental that the lodging marketplace has collected and forwarded the taxes described in subds. 1. and 2.

(b) A municipality may not impose and collect a room tax from the owner of a short-term rental if the municipality collects the room tax on the residential dwelling under par. (a) 2. marketplace provider that is required to collect and remit room taxes imposed by a municipality under sub. (1m) (a), but fails to file a return as required in subd. (1m) (i) 2. or sub. (1m) (j) 4. or pay the required tax, may be subject to a forfeiture of \$500 for each day a return is not filed or the tax is not paid. The total amount of forfeitures that may be imposed by the department of revenue or a municipality may not exceed \$45,000 for any year in which a required return is not filed or required tax is not remitted. A forfeiture imposed under this subsection may be appealed to the department of revenue or the municipality, whichever administers the tax, and the penalty may be waived.

Create sec. 66.1014(1)(c), Wis. Stats., read:

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

Amend sec. 66.1014(2)(d)1., Wis. Stats., to read:

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

Nonstatutory provisions.

ROOM TAX ADMINISTRATION. The authorized FTE positions for the department of revenue are increased by 4.0 GPR positions on January 1, 2021, to be funded from the appropriation under s. 20.566 (1) (gh) for the purpose of administering and enforcing the taxes described in s. 66.0615 (1m) (h)

Effective Date:

- Day after publication

VANDE CASTLE

S. C.

ATTORNEYS AT LAW

GREEN BAY OFFICE
303 S. JEFFERSON STREET
MAILING ADDRESS:
P. O. BOX 993
GREEN BAY, WISCONSIN 54305
Telephone: (920) 435-3599
Facsimile: (920) 435-4049
E-Mail: wvscgb@netnet.net

PULASKI OFFICE
749 STATE HWY 32
MAILING ADDRESS:
P. O. BOX 679
PULASKI, WISCONSIN 54162
Telephone: (920) 822-8232
Facsimile: (920) 822-8264
E-Mail: wvcpul@netnet.net

WM. J. VANDE CASTLE
TED J. WARPINSKI
(Court Commissioner)
MARK A. WARPINSKI
NICHOLAS J. VANDE CASTLE
RONALD A. VENCI
(Of Counsel)

TO: Committee on Agriculture, Revenue and Financial Institutions
FROM: William Vande Castle, General Counsel for the Door County Tourism Zone Commission
DATE: January 29, 2020
SUBJECT: Testimony in favor of Senate Bill 646

Thank you for this hearing and allowing me to testify in favor of Senate Bill 646. The Door County Tourism Zone Commission (the "Commission") is requesting adoption of SB 646 to provide corrective language to Sec. 66.0615, Wis. Stats., that would require online Marketplace Providers to provide essential identifying and transactional information that will assist in insuring compliance with the tax reporting requirements imposed on the Commission and the Lodging Providers.

I am here today to address this issue from the standpoint of compliance enforcement. Our firm has represented the Commission since nearly its inception in 2007. In addition to serving as general counsel, we also serve as the Commission's enforcement agent. Since 2007 I have prosecuted over 75 non-compliant Lodging Providers and litigated 28 of those actions.

The current provisions of Sec. 66.0615, Wis. Stats., have created an enforcement dilemma. That dilemma is, in part, addressed in the revisions provided in SB 646; particularly, with the addition of Sec. 66.0615(1r).

Compliance efforts require a balance between gentle persuasion and aggressive enforcement. It must be remembered that Commission works for the Lodging Providers. Their success is the Commission's success. The Commission wants the Lodging Providers to be successful. But sometimes an enforcement action becomes necessary.

From a compliance enforcement perspective, the ultimate responsible party is and remains the Property Owner, the Lodging Provider, who holds their property out for short term transient rentals. The current provisions of Sec. 66.0615, Wis. Stats., place the Lodging Provider in a difficult situation. Where the property has been rented through a Marketplace Provider, the Lodging Provider may be forced to join the Marketplace Provider into a compliance litigation in order to establish their defense that the appropriate room tax has been collected, reported and paid. Currently, the Commission has no authority to obtain that information from the Marketplace Provider. It is compelled to place that burden on the Lodging Provider. SB 646, with the proposed addition of Sec. 66.0615(1r), will compel the Marketplace Provider to provide the tax collection and verification information directly to the Commission.

The reporting requirements imposed by Sec. 66.0615(1r) will enable the Commission to verify and reconcile tax collections and payments reported by the Lodging Provider and by the Marketplace Provider for specific rental properties. The revisions proposed by SB 646 work for the Commission and its represented municipalities. It also works for the Lodging Providers by lessening their exposure to potential complex compliance enforcement litigation.

Thank you for the opportunity to address this concern. I would be happy to answer any questions.



DOOR COUNTY TOURISM ZONE COMMISSION

PO Box 55, Sister Bay, WI 54234

920-854-6200, Fax: 920-854-9019

E-mail: info@doorcountytourismzone.com

Website: www.doorcountytourismzone.com

January 29, 2020

Dear Senate Committee on Agriculture, Revenue and Financial Institutions,

On behalf of our 19 member municipalities, we ask the State of Wisconsin to adopt SB646 to provide correcting language to State Statute §66.0615 / 2019 WIS ACT 10. We respectfully request that Online Marketplace Providers be required to provide reporting with essential identifying and financial information along with room tax payments to Wisconsin municipalities and/or taxing authorities.

Currently the room tax statute, §66.0615 affords no provisions for reporting requirements for Online Marketplace Providers. Reporting requirements are critical to guarantying fair and equitable room tax remittance and distribution. With the standard use of zip codes or geo-codes to locate properties and their use as part of the distribution process, Wisconsin municipalities will not know if they have received the correct amount of room tax due from Online Marketplace Providers. Zip codes and geo-codes are not accurate methods to determine which Wisconsin municipality is owed local municipal room tax.

Payments from Online Marketplace Providers are remitted to municipalities in bulk. For the Door County Tourism Zone, bulk payments remitted without reporting will not provide the means to distribute room tax to the appropriate municipality under State Statute and per our Intergovernmental Agreements. For Wisconsin municipalities, accepting a bulk payment from Online Marketplace Providers would not provide them the ability to fulfill their fiduciary and statutory obligations as a taxing authority. With the recently passed legislation in 2019 WIS ACT 10, the legislature is asking municipalities and/or taxing authorities to "trust" payments from Online Marketplace Providers; the "honor system" is not an appropriate policy for government entities nor will it satisfy municipal auditors (please see attached auditor's letter).

SB646 puts in place protections for all local taxing authorities, municipalities and/or Tourism Zone Commissions, in dealing with Online Marketplace Providers. SB646 will help guarantee that every municipality and taxing authority in the State receives fair, equitable, and transparent distributions of room tax revenues from Online Marketplace Providers.

Without SB646, Wisconsin municipalities and/or taxing authorities lose their ability to provide assurances and demonstrate to their municipal board, marketing entity, municipal auditors and constituents that they have received the correct amount of room tax due. With levy limits and budget constraints, room tax revenue is essential to municipal budgets. Without the proposed legislation, there will be uncertainty, unpredictability and possibly municipalities at legal odds with one another over incorrectly allocated room tax funds from Online Marketplace Providers.

Online Marketplace Providers must be required to provide the following as outlined in the proposed legislation:

- 1) The address of each property.
- 2) The total sales for each property.

- 3) The total tax collected for each property.
- 4) The number of nights rented for each short-term rental.

In the first days of WIS ACT 10 being in effect, we've seen that Online Marketplace Providers have not consistently notified their hosts of the law changes, communication has been inaccurate and confusing, there has been ineffective programming resulting in room tax not added to all Wisconsin listings, and it is clear that municipalities are being incorrectly designated to receive room tax that is not due to their municipality. For example, one platform is allocating room tax to Sturgeon Bay, when the property is located in the Town of Egg Harbor.

The proposed legislation is necessary because the room tax collection process only works if a municipality or taxing authority can identify, verify and reconcile room tax payments received from Online Marketplace Providers. The issues we have presented underline the necessity to move this bill to the floor for a vote.

It is essential that the proposed reporting provision be retained in the bill to clarify that, "persons who are subject to the room tax must file a room tax return in the manner and form and within the time prescribed by a municipality." Wisconsin municipalities and/or taxing authorities should not be left without options other than accepting a bulk payment from Online Marketplace Providers that does not include detailed reporting information. Wisconsin municipalities need data transparency and cooperation from Online Marketplace Providers; this will only happen if the State of Wisconsin takes the necessary steps to ensure the statute provides these requirements.

The bottom line is that tourism works for us: It supports local lodging, restaurants, retail and attractions while enhancing the quality of life in our communities. Without a consistent and proactive approach to room tax collection, Door County would not have the revenues to dedicate towards a unified, creative media marketing program which has a direct impact on tourism, our main economic driver. Without this legislation, Wisconsin municipalities that depend on tourism will be negatively impacted.

Thank you for the opportunity to provide testimony today on SB646 on behalf of Door County municipalities.

Respectfully submitted,



Josh Van Lieshout
Administrator, City of Sturgeon Bay
Chair, Door County Tourism Zone
Commission



Kim Roberts
Administrator, Door County
Tourism Zone Commission

Attachments:

- 1) Auditor letter
- 2) Action Sheet SB646

October 9, 2019

To whom it may concern:

My name is Josh Swanson, CPA, and I am an auditor with CliftonLarsonAllen LLP. I have been auditing governmental entities in the State of Wisconsin for over 11 years. I am writing to express my concern over the recent changes in room tax reporting requirements. I understand this change will be convenient for lodging marketplace reporters. However, I believe this change will not only negatively impact Door County Tourism Zone Commission, but the hundreds of other Wisconsin municipalities that rely on tourism and room tax revenue. Allow me to discuss how this change will impact an audit.

As part of an audit, we perform tests of transactions and internal controls that are in place for the entity being audited. When there are significant internal controls that are outside of the entity's control, auditing standards require the auditor to evaluate the internal control system in place. This is typically tested through a System and Organization Controls Report (SOC Report). If a SOC Report is not available, extensive testing must be done in order for the auditor to be comfortable with the outside entity's reporting. Whether a SOC Report is available or not, additional time and effort is required to test the information, which will result in additional fees being charged to the entity being audited.

Another concern I have related specifically to Door County Tourism Zone Commission is regarding their responsibility to remit room tax revenues to the corresponding municipality under state statutes and intergovernmental agreements. Currently the Commission is able to document collections within each municipality and properly remit the required amount to the municipality and Door County Visitors Bureau. If the Commission is unable to document the municipality payments are properly allocated and remitted, they will be in violation of state statutes and will likely receive compliance findings as a result of their annual audit.

On a personal level, I am concerned as a Wisconsin citizen that the transparency and accountability will be lost with the reporting changes. My job allows me to see firsthand how important accountability is to taxpayers all across the state. Additionally, with levy limits and budget restraints, I understand how valuable room tax revenue can be to municipal budgets. If the reliance on accurate room tax revenue collections is lost, the uncertainty and unpredictability will negatively impact a municipality's budget.

Thank you for allowing me to express my concerns over the reporting changes. Please don't hesitate to contact me if additional information is needed or further explanation is required.

Sincerely,



Josh Swanson

Director, CliftonLarsonAllen LLP



DOOR COUNTY TOURISM ZONE COMMISSION

PO Box 55, Sister Bay, WI 54234

920-854-6200, Fax: 920-854-9019

E-mail: info@doorcountytourismzone.com

Website: www.doorcountytourismzone.com

LEGISLATIVE REQUEST: The Door County Tourism Zone Commission on behalf of its nineteen member municipalities requests the State of Wisconsin adopt SB646 to provide correcting language to State Statute 66.0615 / 2019 WIS ACT 10. We respectfully request that Online Marketplaces Providers be required to provide essential identifying and financial transactional information along with room tax payments to each municipality and/or taxing authority.

WHY LEGISLATION IS NECESSARY:

- **§66.0615 currently lacks reporting requirements for Online Marketplace Providers:** Currently §66.0615 affords no provisions for reporting requirements for Online Marketplace Providers.
 - Reporting requirements are critical to guarantee fair and equitable room tax remittance and distribution. With the use of zip codes to locate properties and as part of the distribution process by Online Marketplace providers, Wisconsin municipalities can't be guaranteed that they will receive the correct amount of room tax due.
- **Inaccurate location of lodging properties:** Online Marketplace providers don't utilize a system of municipal identification in determining where to send payments.
 - Their standard technology for location of host properties is by zip code or geo-code, neither of which are a reliable method to determine which Wisconsin municipality is owed the collected municipal room tax.
- **Bulk payments with no reporting:** Payments from Online Marketplace Providers in bulk with no reporting will not provide the means to remit room tax to the appropriate municipality under State Statute and our Intergovernmental Agreements.
 - Accepting a bulk payment from Online Marketplace Providers would not allow Wisconsin municipalities to fulfill their fiduciary and statutory obligations as a taxing authority. The legislature is asking municipalities and/or taxing authorities to "trust" payments from Online Marketplace Providers; the "honor system" is not an appropriate policy for government entities nor will it satisfy municipal auditors.

IMPACT: Without proper data, there will be an inability to properly evaluate an Online Marketplace Provider tax bill or to ensure that a municipality has received the correct amount of room tax due. Without the proposed legislation, there will be uncertainty, unpredictability and possibly municipalities at legal odds with one another over incorrectly allocated room tax funds from Online Marketplace Providers.

SOLUTION: Reporting as proposed in SB646 requires: Property address information, total sales and the amount of tax collected for each address would validate to each Wisconsin Municipality and/or taxing authority that they have received the correct amount of room tax due. Transparency, equality and accountability provisions are attained.

WHAT HAPPENS IF PROTECTIONS AREN'T PUT IN PLACE?

Without the proposed legislation, Wisconsin municipalities and/or taxing authorities lose their ability to provide assurances to their municipal board, marketing entity, municipal auditor and constituents that they have received the correct amount of room tax due. With levy limits and budget constraints, room tax revenue is essential to municipal budgets.

IN CONCLUSION:

In the first days of WIS ACT 10 being in effect, we've seen that Online Marketplace Providers have not consistently notified their hosts of the law changes, communication has been inaccurate and confusing, there has been ineffective programming resulting in room tax not added to all Wisconsin listings, and it is clear that municipalities are being incorrectly designated to receive room tax that is not due to their municipality. For example, one platform is allocating room tax to Sturgeon Bay, when the property is located in the Town of Egg Harbor.

These problems highlight the necessity to move this bill to the floor for a vote. It is essential that the proposed reporting provision be retained in the bill to clarify that, "persons who are subject to the room tax must file a room tax return in the manner and form and within the time prescribed by a municipality." This information is essential to verify and reconcile Online Marketplace Providers payments to ensure fair and equitable room tax distributions. No municipality and/or taxing authority should be left with no other option other than accepting a bulk payment from Online Marketplace Providers that includes no reporting information.

The bottom line is that tourism works for us: It supports local lodging, restaurants, retail and attractions while enhancing the quality of life our communities. Without a consistent and proactive approach to room tax collection, Door County would not have the revenues to dedicate towards a **unified**, creative media marketing program which has a direct impact on tourism, our main economic driver. Without this legislation, Wisconsin municipalities that depend on tourism and invest in tourism infrastructure will be negatively impacted.



To: Assembly Committee on Ways and Means
From: Cory Fish, General Counsel and Director of Tax
Date: January 29, 2020
Re: Testimony in Opposition to Senate Bill 646

Thank you Chair Marklein and members of the Senate Agriculture, Revenue, and Financial Services Committee for hearing my testimony in opposition to Senate Bill 646 (SB 646). Wisconsin Manufacturers and Commerce (WMC) does not oppose ensuring that companies pay the amount of tax they owe local governments. However, the additional authority SB 646 provides local governments to audit and fine businesses goes too far.

WMC is the state chamber of commerce and largest general business association in Wisconsin. We were founded over 100 years ago, and are proud to represent approximately 3,800 member companies of all sizes and from every sector of our economy. Our mission is to make Wisconsin the most competitive state in the nation in which to do business.

WMC has a series of concerns with the legislation:

- Section 10: This provision expands upon current law allowing local governments to require businesses to file tax returns, “in the manner and form, and within the time prescribed by the municipality” by allowing local governments to require additional information on the form if they so choose. There should be uniformity in these requirements to prevent saddling businesses with the additional burden of tracking inconsistent forms and filing dates.
- Section 12: The elimination of the “probable cause” language means that a local government can impose an audit without reasonable grounds for belief the business is in violation of the statute. Further, this section expands the type of information an auditor can inspect. Both of these changes are inappropriate government intrusions into the private affairs of a business and should be eliminated.
- Section 14: The forfeiture schedule set up in this section specifically for marketplace providers who do not file a return or pay the tax is different – and significantly more burdensome – than other businesses who fail to pay the tax under current law. There should be parity in the law for all businesses subject to this tax.

Thank you again Chair Marklein and Committee members for the opportunity to testify. I look forward to working with Senator Olsen and Representative Kitchens to address WMC’s concerns.



*formerly the
Wisconsin Innkeepers Association*

Serving the lodging
industry for more than
100 years

January 29, 2020

To: Senate Committee on Agriculture, Revenue and Financial Institutions
Senator Howard Marklein, Chair

From: Kathi Kilgore, Lobbyist

RE: Support for SB 646, Relating to Room Taxes and Marketplace Providers

On behalf of over 650 hotels, motels, resorts, inns, condos and bed and breakfasts, the Wisconsin Hotel & Lodging Association (WH&LA) asks for your support of SB 646.

2019 Act 10, which went into effect on January 1st, created the requirement for marketplace providers to collect and remit sales tax on the sale price of the purchase of goods and some services. The legislation also required the collection and remittance of room tax by marketplace providers that facilitate the sale or furnishing of rooms, lodging or other accommodations to tourists.

SB 646 will help ensure that the room tax dollars that are collected by marketplaces, such as Airbnb, VRBO and Expedia are remitted to the correct municipality. The bill requires counties to provide the Department of Revenue with the complete county tax roll. Once this information is provided, DOR will create a database with the information to help marketplaces identify which municipality an address is in. Marketplaces or their software providers can then upload the database into their platform so that they have the ability to collect the correct amount of the room tax and ensure they are remitting the taxes to the proper municipality.

SB 646 also gives municipalities the tools to properly enforce the room tax law by giving them the ability to levy forfeitures against a marketplace that is not complying with the law. The bill also allows municipalities to collect vital information and potentially review room-tax related records or conduct room-tax related audits.

Room tax collections are vitally important to municipalities and the entire tourism industry alike. In most municipalities that collect room tax, a majority of the room tax funds are designated for tourism promotion and tourism development. These funds are essential to growing our local and state tourism economies.

On behalf of the members of the Wisconsin Hotel & Lodging Association across the state, I ask for you to support SB 646. Thank you for your consideration.

1025 S. Moorland Road
Suite 200
Brookfield, WI 53005
262/782-2851
fax: 262/782-0550

whla@wisconsinlodging.org
wisconsinlodging.org





Luther S. Olsen

State Senator

14th District

TO: Senate Committee on Agriculture, Revenue & Financial Institutions

FROM: Senator Luther Olsen

DATE: January 29, 2020

SUBJECT: Testimony in favor of Senate Bill 646

Thank you Chairman Marklein and the Senate Committee on Agriculture, Revenue and Financial Institutions for holding a hearing and allowing me to testify in favor of Senate Bill 646.

Under current state law, room taxes are remitted back to municipalities based on their zip codes. In many parts of the state there are municipalities that share the same zip code, therefore making it difficult to know whether all municipalities are being provided with accurate room tax totals.

Senate Bill 646 will give municipalities the tools they need to ensure they are receiving the correct amount of room taxes they are owed from lodging marketplaces. Under this legislation, those who are subject to the tax would have to provide the following information:

- The address of each property
- The total sales for each property
- The tax collected for each property
- The number of nights each short-term rental was rented

This legislation authorizes a municipality to impose a forfeiture of up to \$500 per day, for a maximum of \$45,000 a year, if a marketplace provider does not file the required room tax returns to the municipality in a timely fashion or fails to pay the required tax. Forfeitures may be appealed to the municipality. Municipalities can also waive the forfeitures.

We will be returning probable cause to the audit section in the bill. This will ensure that if a municipality has probable cause to believe that the correct amount of room tax has not been assessed or are not receiving the correct amount of room taxes, they may inspect and audit tax-related records of an entity subject to the room tax.

In addition to fixing the audit section, we are working on an amendment to address other feedback received from stakeholders.

Thank you, members. I ask for your support and would be more than happy to answer any questions.



JOEL KITCHENS

STATE REPRESENTATIVE • 1ST ASSEMBLY DISTRICT

Testimony for the Senate Committee on Agriculture, Revenue and Financial Institutions

Senate Bill 646

Wednesday, Jan. 29, 2020

Thank you Chairman Marklein and committee members for holding a public hearing and giving me the opportunity to testify in support of Senate Bill 646, which helps to ensure that municipalities are receiving the correct amount of room tax from lodging marketplace companies, such as Airbnb and Vrbo.

Legislation we passed recently required lodging marketplaces to begin collecting room taxes on behalf of their short-term rental clients. Short-term rentals have always been legally required to submit sales and room taxes, but previously the level of compliance had been very poor. The recent legislative change did make it easier to collect taxes from short-term rentals, but it has also created an unintended problem which we must fix.

Due to current law, lodging marketplaces are likely to remit taxes based on zip codes. In my district, and in other rural areas across the state, several municipalities can share the same zip code. As a result, distributing the taxes to the correct municipality is impossible. SB 646 rectifies this illegal process of tax money being remitted incorrectly.

This would seem like an easy thing to fix but we have worked for months trying to find solutions to address the concerns of the various interest groups. An amendment is currently being drafted which we believe nearly everyone can support. An outline of the changes has been provided by the Department of Revenue.

Initially, we intended for lodging marketplaces to submit taxes and required information directly to each municipality. The amendment gives municipalities two options. Unless they choose to opt out, the Department of Revenue will collect all room tax from the marketplaces and disburse it to the appropriate municipality. Municipalities will pay three percent of the collection to cover the costs of administration. This fee will be reevaluated by the Legislative Fiscal Bureau after the first year and adjusted to cover actual costs. Municipalities will receive no information concerning the actual rental properties, except when DOR does periodic audits.

Municipalities that feel they are equipped to handle collections themselves may opt out of having DOR collect the fees, thereby not having to pay the three percent charge. In this case, the marketplaces must file directly with the municipalities. The marketplaces will be required to submit the addresses and tax amounts collected from each rental unit. We have removed most of the information that was required to be submitted by the marketplaces in the original bill. We now believe this is the bare minimum amount required to accurately monitor collections.

Municipalities must use a standard form developed by DOR and have a standard due date. The amendment also reinserts the requirement that the municipality must have probable cause if they wish to audit the marketplace company.

Municipalities will have the ability to impose forfeitures if the marketplace provider does not file the required room tax returns, or neglects it altogether. The maximum forfeiture that can be imposed per day is \$500, and the maximum for a year is \$45,000. Forfeitures that were imposed by a municipality can be appealed, and municipalities can waive the forfeitures

To be very clear, the purpose of this bill is not to limit the expansion of short-term rentals or to impose a new tax on anyone. It is important, however, that we create a level playing field for all lodging marketplace businesses, traditional hotels and any other entity that supplies overnight rooms. This bill provides measures to move away from having a separate set of rules for each industry.

Thank you for taking the time to listen to my testimony and I hope you consider supporting this bipartisan bill. I would like to thank the other authors of Senate Bill 646 and their staff for all of the hard work they put into this legislation. I am happy to answer any questions you may have.