



JESSIE RODRIGUEZ

STATE REPRESENTATIVE ★ 21ST ASSEMBLY DISTRICT

AB 251: Sales and Use Tax Collections for Marketplace Providers and Reductions in Individual Income Tax Rates

Testimony of State Representative Jessie Rodriguez

Assembly Committee on Ways and Means

June 6, 2019

Chairman Macco and members of the Assembly Committee on Ways and Means, thank you for the opportunity to provide testimony in support of Assembly Bill 251, legislation that will update Wisconsin's tax law to ensure marketplace providers are properly collecting and remitting sales and use tax, and to create fairness and equity for retailers both physical and online. In turn, this legislation will allow us to effectively reduce our state income tax.

In 2018, the United States Supreme Court ruled in *South Dakota v. Wayfair*, that states have the right to collect sales and use tax from out-of-state retailers that do not have a physical presence in the state. Following the ruling, the Department of Revenue promulgated a rule to administer the sales tax on remote sellers and the rule was codified under 2017 Wisconsin Act 368.

However, Act 368, lacked clarity in defining marketplace providers or third party intermediaries that allow marketplace sellers to sell products on their platform. This legislation will define marketplace providers and marketplace sellers and clarify that marketplace providers will collect and remit sales and use tax on behalf of the sellers.

Additionally, Act 368 made clear that all revenue collected from out-of-state retailers would go towards a permanent income tax reduction. However, Act 368 was interpreted as a one-time tax reduction for only 2019. This bill clarifies, there will be another permanent income tax reduction in 2020, the reduction will be rescinded in 2021 and additional revenues in subsequent years will go directly to GPR.



JESSIE RODRIGUEZ

STATE REPRESENTATIVE ★ 21ST ASSEMBLY DISTRICT

Finally, this bill clarifies that sales tax law will be fairly enforced, treating travel intermediaries as marketplace providers in collecting sales tax on their sales transactions.

Last week, this legislation received a hearing in the Senate. The Department of Revenue testified and expressed some concerns with the bill as drafted. We are working with the department to address those concerns and we will be providing an amendment for the committee to review within the next day or two. The department will be testifying today and will discuss some of those issues in greater detail.

To be clear, this bill does not increase tax obligations but rather it ensures that online retailers are following the same set of rules as retailers with a physical presence in Wisconsin. This is an opportunity for our communities across the state to bring in new revenue while simultaneously reducing income tax. Every month that passes, the state misses out on millions of dollars in revenue. Raw projections estimate the state could miss out on as much as \$67.1 million in fiscal year 2019 without this legislation. Please join Senator Kooyenga and me in supporting this legislation. I look forward to any questions you may have.



DALE KOOYENGA
WISCONSIN STATE SENATOR

State Capitol · P.O. Box 7882 · Madison, WI 53707-7882 · (608) 266-2512

June 6, 2019

TO: Members of the Assembly Committee on Ways and Means
FR: Senator Dale Kooyenga
RE: Assembly Bill 251

Thank you for holding a public hearing on Assembly Bill 251, which would require marketplace providers to collect and remit sales tax from third parties and reduce individual income tax rates.

Marketplace providers are third party e-commerce websites that allow multiple sellers to sell products on their single platform. The marketplace provider may also sell its own product on the platform. Following the U.S. Supreme Court decision in *South Dakota v. Wayfair*, states were given the authority to require out-of-state retailers to collect and remit the taxes imposed on purchases by in-state residents.

Unfortunately, compliance with post-*Wayfair* enactments is currently low. AB 251 provides clarity for out-of-state retailers by defining marketplace providers, marketplace sellers, and requiring that marketplace providers collect and remit sales tax on sales facilitated on behalf of marketplace sellers. The bill specifies that 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 travel intermediary. Clarification of the law does not increase tax obligations, but rather increases tax collections.

In response to the ruling in *South Dakota v. Wayfair*, 2017 Wisconsin Act 368 allowed for the revenue collected from out-of-state retailers from October 1, 2018, to September 30, 2019, to be used for a reduction of the individual income tax rates for the taxable year ending on December 31, 2019. Though the intention of 2017 Wisconsin Act 268 was a permanent reduction to the individual income tax rates, it was interpreted as a one-time reduction in tax year 2019. AB 251 makes the changes to the individual income tax bracket reduction from 2019 permanent. Beginning in 2020, the revenue collected will be used to reduce the rate of the second individual income tax bracket. In 2021, the process of lowering individual income tax rates is rescinded and all revenue collected becomes general revenue.

AB 251 will provide clarity for businesses having to comply with the impact of *South Dakota v. Wayfair*, increase state and local revenue, and lower income taxes for individuals.

Thank you again for hearing AB 251 and I respectfully ask for your support.

Many of you know Amazon as the online retailer we've become since first opening our virtual doors in 1995. We're proud to say we've invested more than \$3 billion in Wisconsin since 2011, and we've created more than 4,000 full-time jobs for Wisconsinites across our different facilities in the state. You may not know, however, that there are more than 26,000 authors, sellers, and developers in Wisconsin growing their businesses and reaching new customers around the world through Amazon's marketplace products and services.

Amazon collects and remits sales or equivalent taxes for our U.S.-based retailers in all 45 states that impose a statewide sales tax, including Wisconsin. We also comply with the states that currently have marketplace laws in effect like that under consideration before you. We are the only major internet marketplace that has complied with marketplace collection laws in these states from the first day of their effective dates.

Our marketplace customers and selling partners are not usually tax experts, and many are small businesses that are confused about their responsibilities under different states' laws following the Supreme Court's decision in the *Wayfair* case. This legislation – similar to that under consideration in the majority of states across the country – resolves that confusion.

Based on our experience complying with similar laws in other states, we believe this legislation will level the playing field for all retailers, an outcome that we have long supported. We respectfully encourage your support. I'm happy to answer any questions.



DOOR COUNTY TOURISM ZONE COMMISSION

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June 5, 2019

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Dear Assembly Committee on Ways and Means,

On behalf of all nineteen (19) Door County municipalities that established the Door County Tourism Zone Commission in 2007, we ask that you consider how AB251 will impair Wisconsin municipalities and taxing authorities' ability to fulfill governmental fiduciary requirements. We request clarifying language be added to the legislation to create fundamental municipal protections for the room tax distribution process.

We request that you look beyond the intent of the legislation and contemplate the consequences for those who carry out room tax collection at the local level. AB251 should guarantee that every municipality and taxing authority in the State receives fair, equitable, and transparent distributions of room tax revenues from Lodging Marketplaces.

The room tax collection process only works if a municipality or taxing authority has the ability to identify and reconcile room tax payments received from Lodging Marketplaces. Payments must be connected to a specific property address or local permit number which would in turn validate the municipal location of the property.

Lodging Marketplaces typically locate properties by zip code and remit an aggregate check to a municipality or taxing authority with little to no reporting information. An aggregate check generated by the use of zip codes would not provide for the statutory means for room tax distribution. Zip codes seldom line up with municipal boundaries and multiple municipalities may share the same zip code. Room tax revenues that come to us in an aggregate check without reporting would have to be placed in a "suspense account" and possibly held there indefinitely. There would be no method for the tax to be distributed back to the municipality in which it was collected, as required by statute 66.0615. A Lodging Marketplace payment of room tax by aggregate check with no reporting, according to our municipal auditing firm, would result at minimum in significant deficiencies with a municipal audit and at maximum a violation of State Statute for improper distribution.

The Door County Tourism Zone requests that the State of Wisconsin be explicit in what is required for room tax payments and reporting from Lodging Marketplaces.

Lodging Marketplaces must be required to provide the following:

- 1) Property addresses and/or online listing #ID's for assurance that room tax generated in a municipality can be returned to that municipality.
- 2) Local municipal registration/permit numbers.
- 3) Corresponding room tax amounts being remitted for the report period for each property address / online listing ID.

While the intent of the bill is to level the playing field for traditional lodging, it lacks consideration for the mechanics of how room tax collection and distribution work. It creates a situation where municipalities and taxing authorities may not be able to fulfill their statutory requirements.

Sales and room tax are not voluntary taxes. Lodging Marketplaces become tax collectors via this legislation and should be held to the same rules as any other person or entity collecting and remitting room tax.

Lodging Marketplaces will not, unless required by Statute, provide the crucial reporting data with payment. Wisconsin municipalities need data transparency and cooperation from Lodging Marketplaces; this will only happen if the State of Wisconsin takes the necessary steps to ensure the law provides these protections. The legislation is only feasible for implementation if the following is statutorily required to be provided by Lodging Marketplaces: Property address and or online listing ID's, local registration or permit numbers, and corresponding room tax payments for each online listing ID or property address.

If the State is not willing or able to do so, Lodging Marketplaces should have no authority to collect local room tax and AB251 should be tabled. It then should be up to each individual municipality to choose if they desire to enter into a Collections Agreement with an individual Lodging Marketplace.

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) Action Sheet SB243/AB251
- 2) Public Comment to the Wisconsin Department of Revenue.
- 3) 12-3-18 Hearing Testimony at the Wisconsin Department of Revenue.
- 4) Lodging Marketplace letter regarding zip code error in accessing PRAT tax.



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Attachment #1

► **Tourism Zone Request:** We respectfully request that the provision for Lodging Marketplaces to collect local room tax as part of SB243/AB251 be removed or specifically add language to require Lodging Marketplaces to provide essential identifying and financial information along with room tax payments to each municipality/taxing authority.

SB 243/AB251 would in effect force Wisconsin Municipalities into Collection Agreements with Lodging Marketplaces. Room Tax collection and distribution is not a process that can be outsourced to Lodging Marketplaces without protective measures in place to ensure the correct financial accounting of room tax. Municipalities/ taxing authorities should not be left to fight with Lodging Marketplaces who often litigate to avoid providing payment information to municipalities/taxing authorities.

We appreciate the State's interest in leveling the playing field for those areas in the State that are not in compliance with collecting State Sales Tax. Room Tax authority needs to stay at the municipal level. If a municipality wishes to enter into an agreement with a Lodging Marketplace, it should be a choice that is made at the municipal level.

✓ **WHAT ARE THE ISSUES WITH SB243 WITH REGARDS TO ROOM TAX?**

→ **Zip Codes:** SB243/AB251 will not ensure fair and equitable room tax distribution to the correct municipality by any Lodging Marketplace with the use of zip code location data.

- Lodging Marketplaces don't correctly locate properties. This is a result of their use of zip codes which can't be used to accurately identify which municipality a lodging provider is located in (zip codes rarely line up with municipal boundaries).
- Example: The zip code 54235 covers at least six different municipalities (Town of Jacksonport, Town of Sevastopol, Town of Sturgeon Bay, City of Sturgeon Bay, Town of Egg Harbor and Town of Gardner).

→ **Aggregate Check** - Lodging Marketplaces typically remit an aggregate check to a municipality/ taxing authority with little to no information. An aggregate check generated by the use of zip codes would not provide for the statutory means for room tax distribution.

✓ *Issues regarding zip codes and aggregate checks are significant because even a diminution in the amount of the room tax received by local municipalities, because of error in allocating receipts to the right municipality, would pose a real hardship. For many municipalities room tax proceeds are the largest single revenue stream after the levy, State shared revenues and road aids. Furthermore, Tourism is Door County's top economic driver and it has reached new heights through an effective marketing program paid for by room tax.*

→ **Reporting** -66.0615 states, "Lodging Marketplaces shall collect room tax and forward it to the municipality." The language doesn't explicitly detail or protect municipalities with how a Lodging Marketplace is required to remit room tax payments to a municipality/taxing authority. SB243/AB251 doesn't add any additional language to clarify reporting requirements.

- Municipalities/taxing authorities should not have to accept an aggregate check without supporting documentation to ensure fair and equitable distribution from Lodging Marketplaces. It is a reasonable expectation to be provided with enough information to verify the source of the room tax and an accounting for a report period.
- **Local Impact:** The Door County Tourism Zone Commission is statutorily required to see that room tax proceeds are properly remitted to the proper municipality. We are not allowed to "guess" what a municipality should receive. Money that comes to us in an aggregate check would have to be placed in a "suspense account" and possibly held there indefinitely.

We ask that:

→The State of Wisconsin guarantees fair and equitable room tax distribution through additional clarifying language.

-OR-

→ Exclude room tax entirely from SB243/AB251. Return/keep regulatory authority of room tax to the local level. Marketplace collection of sales tax works because it is a uniform tax; it doesn't work for room tax as rates vary by municipality.

→ **Include in SB243/AB251:** Lodging Marketplaces will not, unless required by Statute, provide the crucial reporting data with payment. Lodging Marketplaces must be required to include reporting with required information along with room tax payments. This would allow a municipality/taxing authority to ensure accurate payments to fulfill governmental fiduciary and audit requirements.

Lodging Marketplaces must be required to provide the following:

- 1) Property addresses and/or online listing #ID's for assurance that room tax generated in a municipality can be returned to that municipality.
- 2) If possible, local municipal registration/permit numbers.
- 3) Corresponding room tax amounts being remitted for the report period for each property address / online listing ID.



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Attachment #2

Date: September 10, 2018

From: The Door County Tourism Zone Commission on behalf of Door County Municipalities

To: Wisconsin Department of Revenue Office of the Secretary and Office of General Counsel

Memorandum: Public comment on the economic effect of the proposed Administrative Rules pertaining to Chapter Tax 11.97 with regards out of state retailers (Lodging Marketplaces) and nexus.

On behalf of our member municipalities, we write to you today to address our concerns about the ambiguity of WI ACT 59 with regards to reporting.

The Door County Tourism Zone is the tax collection and enforcement authority for room tax for all nineteen (19) municipalities in Door County, WI.

We ask that as you consider new rules to deal with the South Dakota vs. Wayfair decision that you take into consideration the impact it will have on the implementation of ACT 59 and the resulting process of how room tax will be collected by remote sellers i.e. Lodging Marketplaces. With the barriers of nexus removed as a result of the South Dakota vs. Wayfair ruling, it seems only a matter of time before WI ACT 59 is implemented.

Each lodging platform "Lodging Marketplace" has a different business model creating challenges of applying a vague policy for room tax collection and remittance. Compounding the problem is that each municipality has different ordinances establishing room tax and different tax rates.

LODGING MARKETPLACE LOCATION OF HOST PROPERTIES

Lodging Marketplaces are unable to correctly locate properties due to their use of zip codes as a location tool which is inaccurate when the identification of accurate municipal boundaries is necessary. With incorrect location data it would be improbable that the correct distribution of room tax to the municipality in which it was collected could be completed. There is a lack of language that directly implies how Lodging Marketplaces would be required to remit room tax back to municipalities. Lodging Marketplaces likely would remit an aggregate check to a taxing authority with little to no information. An aggregate check generated by the use of zip codes

would not allow for the correct room tax distribution back to the municipality from which it was collected as required by WI Stats. 66.0615.

Airbnb has informed the Tourism Zone that they perform their collections based on zip codes. Consequently, zip code data cannot be used to distribute room tax revenues back to municipalities. Moreover, it is unfair for our (or any Wisconsin municipality) municipalities to expect that the 30% be divided back to municipalities equally. It should be distributed based on actual collections within each municipality as required by WI Stats. 66.0615.

Room tax is the method in which local tourism marketing is funded within the State of Wisconsin. Door County has survived the hardship prior to the establishment of room tax in 2007 by losing our tourism market share. It is imperative that we preserve this method of funding for tourism marketing.

MUNICIPAL IMPACT

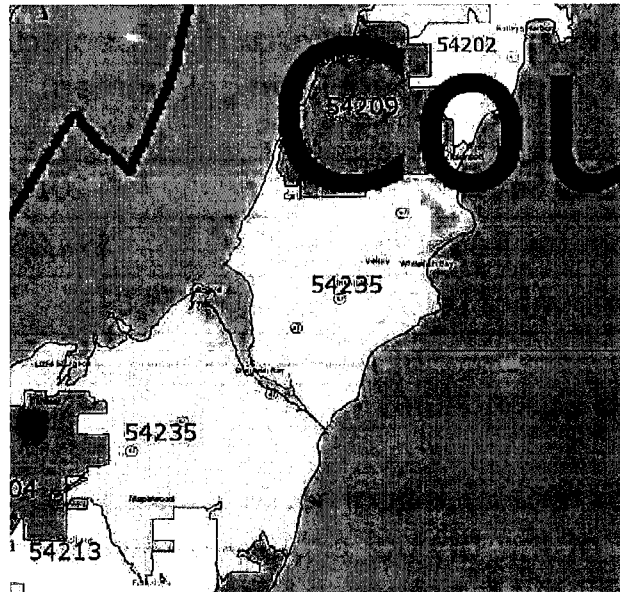
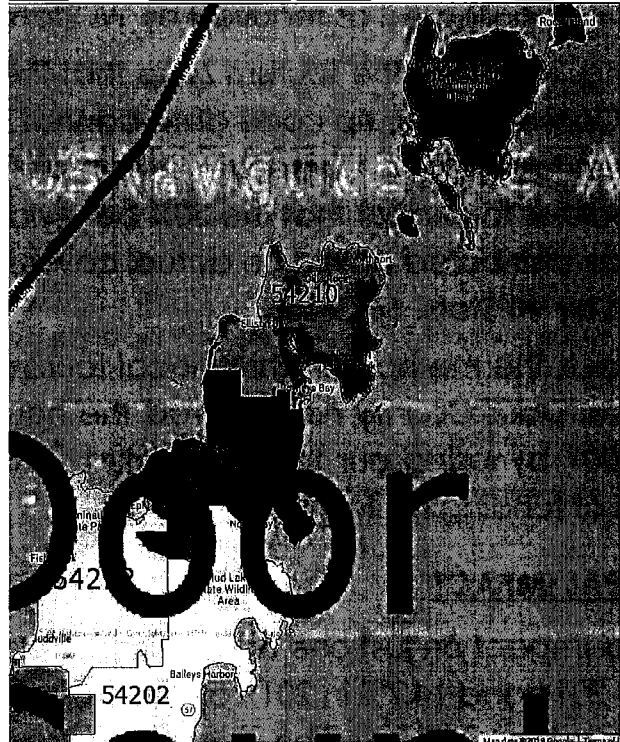
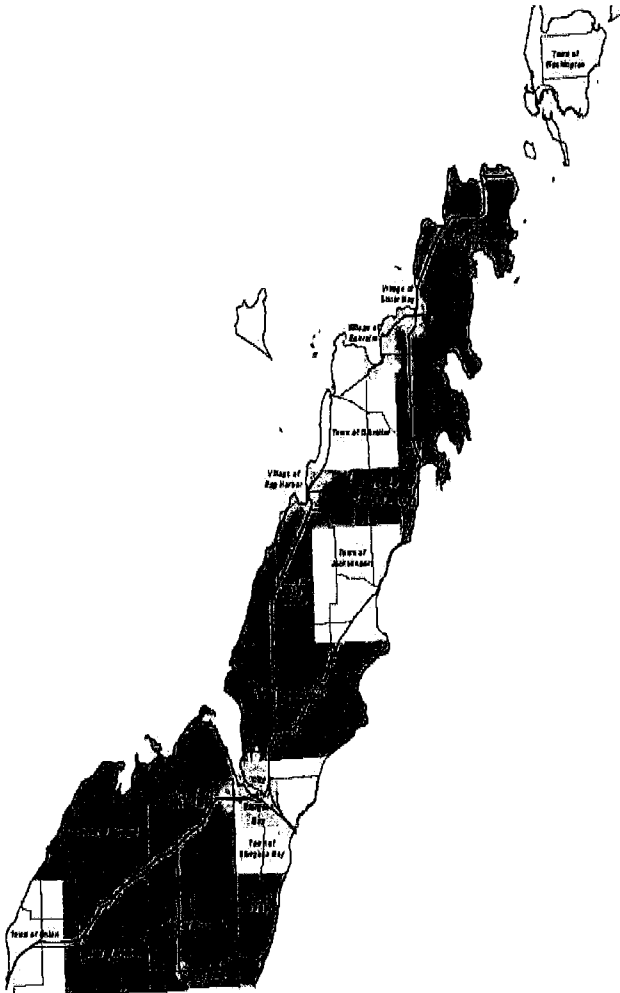
The local impact on just one of our nineteen municipalities: Room tax receipts equal 14.6% in 2016 and 14.7% in 2017 of the property taxes collected. A significant increase in the levy would be required to make up the loss occasioned by the revenue shortfall if the room tax disappeared. It points out the significance of the room tax in funding local Town government.

Town of Sevastopol	2016	2017
Room tax Receipts	\$96,039	\$96,604
Amount of Levy	\$659,823 (14.6%)	\$656,162 (14.7%)
Total Expenditures	\$1,080,633 (8.9%)	\$1,087,113 (8.9%)

Room tax receipts equal nearly 15 % percent of the Town's levy and cover nearly 9 % percent of the annual expenditures of the Town in both 2016 and 2017. In other words, without the revenue from room taxes, the Town would have no way of making up the shortfall. ***Even a diminution in the amount of the room tax, because of error in allocating receipts to the right municipality, would pose a real hardship and violate WI Stats. 66.0615.***

ZIP CODES DON'T LOCATE MUNICIPALITIES – A STATEWIDE ISSUE

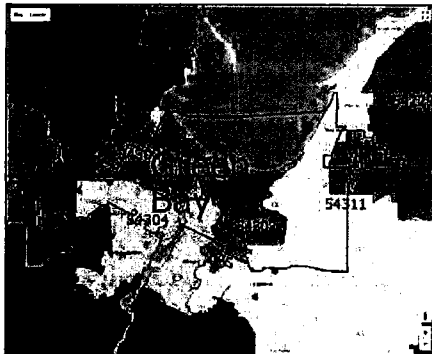
This is a statewide issue; a review of a few of Wisconsin's top tourism counties and their zip codes, compared to their municipal boundaries, shows that locating properties by zip codes will not create a successful process for Lodging Marketplaces to remit room tax.



Door County was ranked #7 in the state for 2017 with \$358.7 million in Direct Visitor spending. Door County has the zip code 54235, which covers the Town of Jacksonport, the City of Sturgeon Bay, the Town of Sturgeon Bay, Town of Sevastopol, the Town of Nasewaupée and Town of Egg Harbor – all different municipalities. In this case, room tax would not be fairly and justly remitted under the zip code 54235.

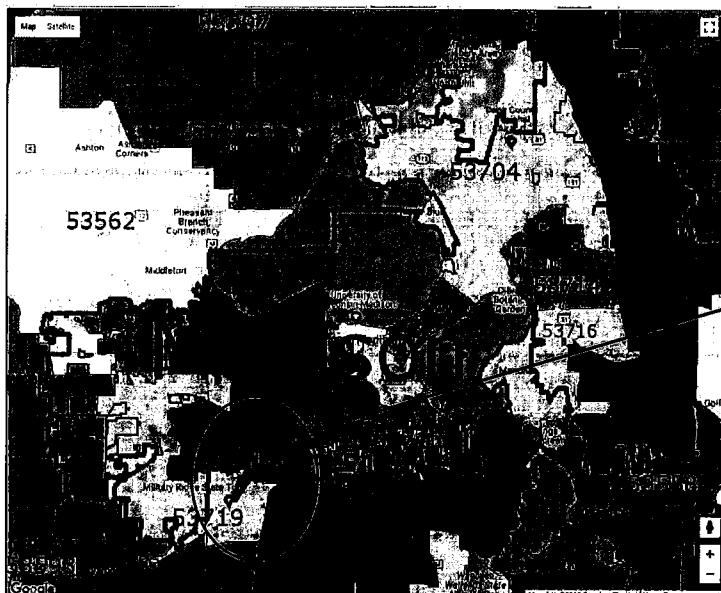
Brown County, which ranked #5 in the State in 2017 for Total Tourism Impact, with \$671.0 million spent in direct visitor spending, also has municipal lines that do not line up with zip codes. The City of Green Bay has zip codes that contain areas that are

not within their municipal lines. 54311, 54229, 54304, 54303 and 54313 have portions that are in the City of Green Bay, but not entirely. For example, Ashwaubenon has three zip codes (54115, 54304, and 54313), two (54313 and 54304) fall into the City of Green Bay municipal boundaries. If properties are located by zip code that could mean that the City of Green Bay could receive the room tax payments and not the surrounding municipalities where the actual rental property location exists as required by WI Stats. 66.0615.



	2016 Lodging tax Rate	2015 Reported Revenues
Brown		
Allouez (V)	10.0	4,359
Ashwaubenon (V)	10.0	332,011
Bellevue (V)	10.0	12,714
De Pere (C)	10.0	7,768
Green Bay (C)	10.0	352,409
Howard (V)	10.0	12,240
Pulaski (V)	8.0	2,463
Suamico (V)	10.0	132,858

Rate and Revenues Source: Department of Revenue and Legislative Fiscal Bureau



	2016 Lodging tax Rate	2015 Reported Revenues
Dane		
Bloomington (T)	6.0	89,642
Fitchburg (C)	6.0	27,788
Madison (C)	9.0	13,819,792
Madison (T)	8.0	148,807
Middleton (C)	7.0	1,876,931
Middleton (T)	5.0	30,529
Monona (C)	8.0	233,657
Stoughton (C)	6.0	68,603
Sun Prairie (C)	4.0	73,218
Verona (C)	7.0	248,834
Vienna (T)	6.0	129,462
Waunakee (V)	5.0	19,005
Windsor (T)	3.0	14,025

The City of Madison (see above) could already be receiving room tax revenues from surrounding municipalities, as the City of Madison has entered into a Collections Agreement with Airbnb. For example, The City of Fitchburg WI, zip code 53711 (brown shading), falls both into the City of Madison and outside the City boundaries. These are just a few of examples of a statewide issue.

PAYMENT AND DISTRIBUTION – EQUALITY FOR WISCONSIN MUNICIPALITIES

Apart from the location issues, the payments from Lodging Marketplaces typically arrive in aggregate with little to no information as to which municipality the tax came from. This lack of information makes it impossible for the Door County Tourism Zone or

any municipal taxing authority, to break down an aggregate check for distribution as required under current law.

We respectfully ask on behalf of our member municipalities that language be considered that requires "Lodging Marketplaces" to match up local registration and or permit numbers with their listing identifications so that the correct accounting of room tax distribution can occur. The Lodging Marketplaces can add this local identifier to their databases for use when reporting back to municipalities. This level of transparency has to be in place so that taxing authorities have the necessary information for their own audit practices as well.

PREMIER RESORT AREA TAX "PRAT" AND LOCATION ISSUES

Our concerns have already become a reality in Door County with the implementation of PRAT tax in the Village of Sister Bay. Lodging Marketplaces are charging Premier Resort Area Tax "PRAT" tax on properties that are not in the Village of Sister Bay, but have a Sister Bay zip code. These lodging providers are having no success in correcting the issue with the Lodging Marketplace platforms. This issue highlights the lack of consumer protection for lodging providers.

The technology is not yet available for location detection to apply anything other than a uniform sales tax. If Lodging Marketplaces can't properly locate a municipality to apply PRAT, how are they going to facilitate the proper collection and remittance of room tax?

REQUEST FOR ACTION

Door County embraces vacation rentals and they are a very valuable part of our lodging industry, however rules and or correcting language need to be established to enable municipalities to carry out the requirements of Sec. 66.0615, Stats. The legislation and newly promulgated rules need to ensure:

- For room tax to continue as a means to fund Destination Marketing and the tourism industry throughout the State of Wisconsin.
- For room tax to continue to support municipalities.
- To ensure that room tax generated in a municipality can be returned to that municipality (both for marketing and support).
- For Lodging Marketplaces to use local registration or local permit numbers to assist with identifying properties for local municipalities.
- The ability to maintain reporting within a municipality as it is currently conducted.
- All data must be reported as required by the local ordinances.


- For host (lodging provider) protection, proof of remittance of both sales and room tax amounts.
- And if a Tourism Zone is in place that Lodging Marketplaces work directly with the Tourism Zone.

Should Door County lose or have room tax revenues compromised in any way that would not be distributed equitably (distributed based on the municipality it was collected from) it would be absolutely devastating to an area whose economy depends so much on tourism and the business generated from destination marketing. Our permit holders are the business owners of Door County who have invested in the tourism industry with their means; their effort to collect and remit room tax has created a marketing engine that draws visitors to Door County who in turn support the restaurants and retailers of Door County. Our local municipalities depend on their statutory 30% to balance their budgets with many of them reinvesting their portion back into tourism promotion and economic development.

Door County has embraced short term rentals and worked diligently to ensure a level playing field with traditional lodging providers. We want to guarantee that rentals that provide the extra capacity and variety that travelers are looking for continue to help support local businesses and restaurants and are doing their share.

We face issues with: Location by zip codes, municipal boundaries, aggregate checks, transparency and consumer protection. We need to ensure that room tax remains as a funding source for tourism marketing and support to local municipalities. The Tourism Zone Commission requests that the Wisconsin Department of Revenue advocate for a legislative review and correcting language to fix the issues rather than promulgating corrective Administrative Rules pertaining to Chapter Tax 11.97 that will impact room tax. We urge you to advocate for short-term rental regulation as a standalone bill in the general legislative session. Wisconsin residents and lodging providers deserve a full, fair, and transparent debate on what is clearly a public policy.

Sincerely,



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

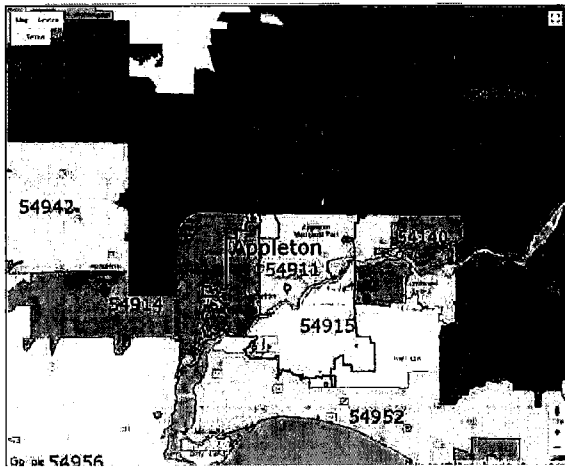


Kim Roberts
Administrator, Door County
Tourism Zone Commission

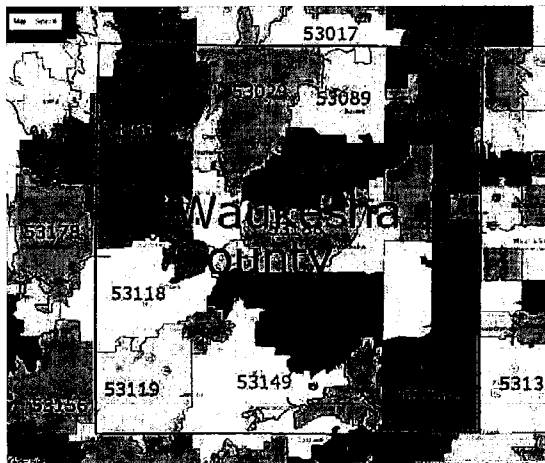
Additional Examples:

In Appleton/Fox Cities-

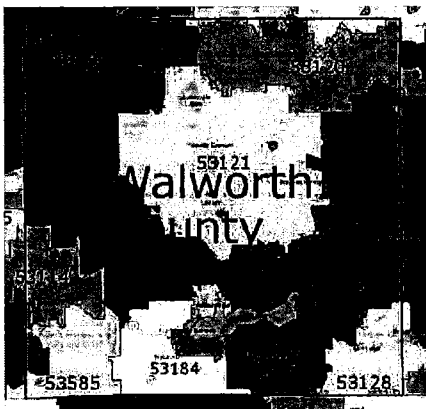
Outagamie County - #8 \$348.0 million in direct visitor spending



Waukesha County – Ranked #4 for 2017 - \$776.4 million in Direct Visitor Spending



Walworth County - #6 for 2017 - \$544.2 million in Direct Visitor Spending



Note: **The 53105 zip code is partly Walworth County and part Kenosha County – both with different taxing authorities.



DOOR COUNTY TOURISM ZONE COMMISSION

Attachment #3

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December 3, 2018

Dear Wisconsin Department of Revenue Office of the Secretary and Office of General Counsel,

My name is Kim Roberts. I am the Administrator of the Door County Tourism Zone Commission. I am here today to represent all nineteen (19) Door County municipalities.

While room tax may not be discussed expressly during today's hearings, we ask that you consider how the provisions of newly promulgated rules will impact room tax. Specifically with regards to Lodging Marketplaces and how they would remit room tax.

The Door County Tourism Zone was created in 2007 with all nineteen (19) Door County municipalities joining together to create a Tourism Zone according to WI STAT. 66.0615. As the taxing authority, the Tourism Zone handles room tax collection, distribution and enforcement for all Door County municipalities. Door County has a successful room tax model because we take consistent and proactive measures to ensure that our member municipalities and marketing entity receive their equitable share of room tax revenues. We strongly support our lodging providers that utilize Lodging Marketplaces as they provide affordable and flexible accommodation options that our visitors seek.

The broad view concern is that Wisconsin municipalities are essentially being forced into Collections Agreements with Lodging Marketplaces via ACT 59. Currently Lodging Marketplaces don't have the technology to deal with room tax collection or the ability to ensure equitable distribution of room tax revenues back to the municipality in which it was collected. The room tax collection process can't be contracted out to Lodging Marketplaces. The process only works if a municipality is able to identify the who, what and where of their lodging providers.

Issues with transparency, collections and reporting that will most assuredly develop will likely fall on deaf ears. When municipalities are left in the unfortunate position of having to litigate because they don't have the information they need to distribute room tax, these large International companies would simply out spend and or allow Wisconsin municipalities to hemorrhage funds in legal fees. Without the WI DOR directly addressing these issues, Wisconsin municipalities face the prospect of unaffordable litigation expenses when their budgets are already extremely stretched.

As an example, Door County has already seen issues with PRAT tax. Lodging Marketplaces have not yet corrected the zip code location issue associated with PRAT tax. Additionally, if the City of New York is unable to compel Airbnb to abide by their local ordinances for

reporting requirements, what is the prospect for the individual municipalities in the State of WI?

Each Lodging Marketplace has a different business model creating challenges of applying a vague policy for room tax collection and remittance. Compounding the problem is that each municipality has different ordinances that establish room tax, different room tax rates and different practices to collect and distribute room tax.

At the local level, our concerns are the use of zip codes for location purposes, aggregate checks and the method of how room tax would be reported.

Many Lodging Marketplaces use zip codes as a location tool. The use of zip codes creates the inability for a Lodging Marketplace to correctly locate a property, making it nearly impossible to apply the correct room tax rate and identify the correct municipality the room tax should be distributed to. We'd like to stress, zip codes can't accurately be used to identify which municipality a lodging provider is located in and they seldom line up with municipal boundaries. For example, the zip code 54235 covers five different Door County municipalities.

Solutions that have been proposed such as adding the zip+4 only gives the Postal Service a routing number for delivery and is not intended to locate a municipality. In the 54235 example, the 4 additional digits simply represent delivery sectors for the mail carrier and are not meant to correspond with municipal boundaries. Geographical Information Systems "GIS" is uneven from place to place; offering different levels of capability based on location, making it unlikely to be used on a large scale by a Lodging Marketplace. And although the WI DOR Co-Muni code could be a valid identifier of a proper municipality, we know of no instance where it has been adopted by Lodging Marketplaces. The Co-Muni codes are unique in their use by the WI DOR.

The current language simply states that, "Lodging Marketplaces shall collect room tax from the occupants and forward it to the municipality." The language doesn't directly imply how Lodging Marketplaces would be required to remit room tax back to municipalities.

Wisconsin has 1,851 municipalities per the Wisconsin Towns Association. It is not feasible that each Lodging Marketplace is going to work with each individual, local taxing authority to determine how to report room tax.

Lodging Marketplaces likely would remit an aggregate check to a taxing authority with little to no information just as they do with their Collections Agreements. An aggregate check generated by the use of zip codes would not provide for the statutory means for room tax distribution. Most importantly, the Door County Tourism Zone Commission is statutorily required to see that room tax proceeds are properly remitted to the proper municipality. We are not allowed to "guess" what a municipality should receive. Money that comes to us in an aggregate check would have to be placed in a "suspense account" and possibly held there indefinitely. There would be no method for the tax to be distributed back to the municipality in which it was collected as required by State Statute. For our municipalities, even a diminution in the amount of the room tax, because of an error in allocating receipts to the right municipality, would pose a real hardship. As you know, for many municipalities

room tax proceeds are the largest single revenue stream after the levy, State shared revenues and road aids.

Lodging Marketplaces must be required to match up local registration and/or permit numbers with their listing identifications so that the correct accounting of room tax distribution can occur through the reporting process. This level of transparency has to be in place so that taxing authorities have the necessary information to complete their own collections and distribution process, not to mention their own audit practices.

The newly promulgated rules need to provide:

- For room tax to continue as a means to fund Destination Marketing and the tourism industry throughout the State of Wisconsin and support our local municipalities.
- For room tax to remain a local tax and not become a state collected tax.
- Assurance that room tax generated in a municipality can be returned to that municipality (both for marketing and support).
- For Lodging Marketplaces to use local registration or local permit numbers within their reporting to assist with identifying properties for local municipalities while maintaining local reporting requirements (including data) per local ordinances.
- For host (lodging provider) protection, proof of remittance of both sales and room tax amounts.
- And if a Tourism Zone is in place that Lodging Marketplaces work directly with the Tourism Zone.

In closing, Door County currently has approximately 1,020 online listing with the various Lodging Marketplaces with only seven (7) unpermitted properties. That is less than 1% unpermitted and in turn that means over 99% of Door County lodging providers that list online are collecting and remitting room tax.

Door County approaches compliance seriously: We identify and reach out to lodging providers who advertise online assisting them with the permitting process. We then partner with our lodging providers to ensure that they collect and remit room tax.

This is not a process that can be outsourced to Lodging Marketplaces, it is much too complicated. Moreover, there is no way to force Lodging Marketplaces to comply with WI ACT 59 as there is no software in place to effectuate the room tax collection process and no authority to force compliance. The eventuality of litigation takes us far away from the purpose of room tax funding which is to support local tourism and promotion. It is not enough to say that Lodging Marketplaces will have to create programming.

Thank you for the opportunity to provide comment on the proposed administrative rules on behalf of Door County municipalities.

Sincerely,

Kim Roberts, Administrator
Door County Tourism Zone Commission



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

Attachment #4

August 6, 2018

To whom it may concern,

The Door County Tourism Zone Commission is the registration and taxing authority for lodging properties in Door County, WI. The Inn at Little Sister Hill has been permitted and registered as a resort since before 2008 in the **Town of Liberty Grove**.

It is our understanding the Inn at Little Sister Hill is having issues with regards to Premier Resort Area Tax (PRAT) being charged for services and reservations due to its mailing address. Please let this letter and corresponding documents serve as confirmation that the Inn at Little Sister Hill is not located in the Village of Sister Bay. **The Inn at Little Sister Hill is located in the TOWN OF LIBERTY GROVE.**

I have included the permit, system snapshot, and property tax bill to substantiate where this business is located. Please identify the code 32 on all Tourism Zone documents with our coding system sheet which will allow you to break down the permit number for municipal identification. Code 32 identifies the Town of Liberty Grove. Further, the property tax bill clearly lists the property in the Town of Liberty Grove parcel code 181.

This information should be sufficient to change how you are locating the property with regards to PRAT tax. PRAT tax should not be charged on anything in relation to this property.

Should you have any questions, please don't hesitate to contact me.

Sincerely,

Kim Roberts
Administrator



2801 Fish Hatchery Road | Madison, WI 53713 | (608) 270-9950 | (800) 589-3211 | FAX (608) 270-9960 | www.wirestaurant.org

Testimony

June 6, 2019

Assembly Committee on Ways and Means

Thank you for the opportunity to speak today on behalf of the restaurant industry, specifically for our regional and national brands who act as franchisors.

Like our colleagues in the hotel and lodging industry, some restaurants are franchises, meaning they have the name of a large brand, but are locally owned small businesses. These small businesses have the benefits of the well-known brand name, but are still autonomous businesses when it comes to complying with state and local laws and regulations.

Ordering food for pick up or delivery and paying online or using an app is the fastest growing trend for restaurants. Consumers are telling us they want restaurant prepared food, but want to eat it at home or in the case of lunch, at their offices. Both independent and multi-unit national brand restaurants are using these platforms to meet their customer's demands.

For restaurants that are franchises, most use an online platform provided by its franchisor (or parent brand). These platforms provide uniformity of brand to make sure all franchisees have a seamless look. When it comes to processing credit cards however, these platforms hook directly into the franchisee's point of sale (POS) system and process the card at the local level. The franchisor is not involved in processing the card or collecting the appropriate state and local taxes. Those responsibilities belong to the franchisee.

This bill provides the opportunity for franchisors to provide information to the Department of Revenue to clarify whom in its franchise system is responsible for collecting taxes. Should there ever be a question regarding a restaurant collecting appropriate sales taxes, this will give the Department a clear path in its investigation.



WH&LA

Wisconsin Hotel & Lodging Association

formerly the
Wisconsin Innkeepers Association

Serving the lodging
industry for more than
100 years

June 6, 2019

To: Assembly Committee on Ways and Means
Representative John Macco, Chair

From: Kathi Kilgore, Lobbyist

RE: Support Requested for AB 251 on Marketplace Providers

The Wisconsin Hotel & Lodging Association (WH&LA), the sixth largest state lodging association in the country, asks for your support in passing AB 251. This legislation ensures that "Marketplace Providers" would no longer be able to by-pass Wisconsin law, and avoid collecting and remitting state and county sales tax, as well as the local room tax.

In 2018, 49% of online platform purchases of overnight stays were facilitated by large platforms other than Airbnb. The collection and remission of taxes at the three levels of government in our state is not just an Airbnb issue. Since the Wayfair decision by the U.S. Supreme Court last summer which paved the way to taxation of remote sellers, there are a growing number of platforms that are now required in to remit taxes on sales in more than half of the states.

AB 251 proposes closing any last loopholes and making it clear that not only for lodging, but other online purchases, will be subject to sales tax collections. The amount of new revenue that will be collected from Marketplace Providers is significant for the state and counties. However, the tax revenue that our industry is most concerned about is the increase in local room tax, a tax that provides critical revenue for local tourism promotion. AB 251 clarifies and ensures that everyone enjoying the benefits of promotions that draw travelers to an area will contribute their fair share, like other lodging businesses.

Upon learning of the proposed "marketplace" concept initially proposed in the State Budget, the WH&LA worked with the DOR to address a business model in our industry that could warrant a different approach. Hotel Brands in our state assist their branded properties with traveler reservations, with every one of their branded properties already permitted with the DOR and collecting and remitting the taxes on the FULL price paid by the traveler.

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

fax: 262/782-0550

whla@wisconsinlodging.org

wisconsinlodging.org



There is no more tax revenue to gain under this model, and so language was developed to allow for a fair waiver process for eligible Hotel Brands to apply for that also addresses the DOR's interest in ensuring that taxes were remitted on the FULL sales amount paid by the purchaser. This provides a reasonable pathway with specified requirements that protect each level of government in receiving tax revenues.

Between generating more tax revenue at each level of government, providing valuable room tax revenue to help fund local tourism promotion, and providing a more fair business environment for competitors, AB 251 helps Wisconsin to join numerous other states in closing loopholes enjoyed for too long by large online platforms making sales in our industry and many other industries.

On behalf of the members of the Wisconsin Hotel & Lodging Association across the state, we ask for you to support AB 251. Thank you for your consideration.



Date: June 6, 2019

To: Members of the Assembly Committee on Ways and Means
Representative John Macco, Chair

From: Charlie Eggen – Verona Hotel Group and Officer of the Wisconsin Hotel & Lodging Association

RE: Support of AB 251 on Marketplace Providers

As a long-time General Manager of multiple hotels renting lodging in Wisconsin, as well as an Officer of the only state association representing the entire lodging industry in Wisconsin, I feel it is important to express the frustration of hundreds of small and large lodging owners and operators around the state who every day follow the law in collecting and remitting sales tax to the state and county, along with local room tax and other taxes, such as Premier Resort Area Tax in some communities, when thousands of lodging rentals processed by large profitable online platforms by-pass these taxes in whole or in part, by either not remitting any sales taxes or only remitting on a portion of the total sales price paid.

We believe in the value of these taxes to the business communities in which we operate, and in funding government operations that support us, however we need clarity in ensuring that full funding is delivered at each level of government – in particular local room tax that helps to attract visitors that are critical to the success of our local tourism businesses.

The Marketplace Providers concept outlined in AB 251 will help considerably in leveling the playing field in our industry so that all lodging rentals made to the public capture the same taxes in full. What we are really addressing here is Tax Fairness, and we appreciate your consideration in moving this legislation forward.

Please support AB 251.

A handwritten signature in black ink, appearing to read "Charlie", written in a cursive style.



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L3 Technologies, Inc.

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Exelon Corporation

Fred Nicely
Senior Tax Counsel
(202) 484-5213
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June 6, 2019

Representative Macco, Chair
Representative Wittke, Vice-Chair
Assembly Committee on Ways and Means
Wisconsin State Legislature

Re: Recommended Changes to Marketplace Provider Provisions in A.B. 251

Dear Chair Macco, Vice-Chair Wittke, and Members of the Committee on Ways and Means:

On behalf of the Council On State Taxation (COST), I am submitting this testimony to recommend changes to the marketplace facilitator provisions in A.B. 251. While we are continuing to work with our members to ensure marketplace laws operate as intended to enhance the states' collection of sales and use taxes via remote sales and marketplace provider laws, COST recommends the following changes to prevent unintended problems with the enforcement of marketplace provisions contained in A.B. 251. Addressed in more detail below, COST recommends improvements to the definition of a marketplace provider and the inclusion of broader exceptions allowing certain marketplace sellers to continue collecting and remitting the tax to the Wisconsin Department of Revenue. COST further recommends that services subject to additional taxes and fees or have simultaneous use at multiple locations should be excluded from the marketplace provider provisions.

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of approximately 550 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities. COST has a significant number of members that own property, have employees, and otherwise have significant operations in Wisconsin.

Definition of Marketplace Facilitator and Need for Exceptions

COST suggest some clarification to the proposed definition of a marketplace provider to ensure a person that is merely advertising products or assisting in the payment process, without actually facilitating a sale to a purchaser, is excluded from the definition. The provision also fails to address certain marketplace sellers that have already developed and implemented sophisticated sales and use tax collection systems that more accurately collect Wisconsin state and local sales and use taxes (along with other taxes and fees on the same transaction such as certain telecommunication fees such as 911 charges) than a marketplace provider could. To address this issue, COST recommends incorporating the following language into Wisconsin law to address definitions of "marketplace provider" and "marketplace seller" and to clearly allow certain transactions to be excluded:

- A. "Marketplace provider" means a person who facilitates a retail sale by a marketplace seller by:
1. Listing or advertising for sale by the marketplace seller in any forum, tangible personal property [limited to enumerated services and/or digital goods] that are subject to tax under this [chapter]; and
 2. Collecting payment from the customer and transmitting that payment to the marketplace seller, either directly or indirectly, through agreements or arrangements with third parties, regardless of whether the marketplace provider receives compensation or other consideration in exchange for its services.
- B. "Marketplace seller" means a seller that makes retail sales through any physical or electronic marketplace operated by a marketplace provider.
- C. Marketplace provider transactions do not include:
1. Transactions where a marketplace provider provides advertising services, including listing products for sale, so long as the internet advertising service platform or forum did not engage directly or indirectly through one or more affiliated persons in the activities described in Subsection A.2. In addition, Subsection A.2 does not apply to transactions where a person is appointed by a marketplace provider or marketplace seller to handle various forms of payments, such as processing credit cards and debit cards, and the person's principal activity with respect to the transactions is facilitating the payment between the purchaser and the marketplace provider or seller.
 2. Transactions for rooms, lodgings, or accommodations described in [cite code section] and transactions for motor vehicle rentals described in [cite code section] if the provider of such rooms, lodgings, accommodations, or motor vehicle rentals is a [registered seller] under [cite code section(s)].
 3. All transactions of a marketplace seller where a waiver is approved provided the following requirements are met:
 - a. The marketplace provider submits a waiver application to the tax commissioner;
 - b. Both the marketplace provider and the marketplace seller subject to the waiver agree that the marketplace seller will collect and remit all applicable taxes and fees and the marketplace provider collects the applicable tax registration numbers from the marketplace seller;
 - c. The marketplace seller who agrees to collect and remit all applicable taxes and fees provides evidence to the marketplace provider that it is registered under [cite code section]; and
 - d. The department approves the waiver application. The department has the authority to promulgate regulations for applying, processing a waiver for approval, and the denial of a waiver.

4. All the transactions of a marketplace seller shall be subject to a waiver without the pre-approval of the department where the conditions in Subsections C.3.a through C.3.c are met and the marketplace seller is able to certify the following:
 - a. It has annual U.S. gross sales over \$1 billion, including the gross sales of any related entities; and,
 - b. The seller or a related entity is publicly traded on at least one major stock exchange.

This waiver shall be valid at the time the marketplace provider submits the waiver application to the department that includes the information required to be certified in this Subsection.

For all transactions excluded under Subsection C, the tax levied under [cite code section], including [list other applicable taxes/fees directly imposed on consumer from a transaction, *e.g.*, environmental fee for paint, tire fee, 911 charges, etc.], shall be the responsibility of the marketplace seller and the seller must collect and remit such taxes. The marketplace provider is not responsible for collecting and remitting the taxes on such transactions and shall be relieved of liability for any taxes or associated penalties and interest that qualify for exclusion under this section.

- D. Nothing in this section shall allow the department to collect the tax owed more than once.

The above language would clarify which transactions a marketplace provider and seller must collect tax on. Importantly, it also allows marketplace sellers with sophisticated sales and use tax collection and remittance systems already in place to continue collecting those taxes and other associated taxes and fees that apply to their transactions. This will also help marketplace providers with insufficient systems to allow marketplace sellers to continue to collect and remit their own additional taxes and fees.

Recommended Improvements to Other Marketplace Provider Provisions

The class action provision contained in s. 77.523(7) should also be clarified to include marketplace sellers. As presently written, it is inequitably limited to marketplace providers. Audit liability relief for marketplace sellers should also extend to the additional taxes and fees. And, to clarify that marketplace providers have the same standing as other sellers in Wisconsin, COST recommends revising the language in A.B. 251 to specifically address providers' rights to claim credits, deductions, and other adjustments to the sales price in the same manner as other sellers, including vendor compensation and the administration of exemptions and refunds.¹

COST also recommends removing the last sentence in s. 77.523(2), which would hold marketplace providers and sellers jointly liable if a marketplace provider fails to notify a marketplace seller it will be collecting and remitting the tax. While there is no problem with requiring notification, it is inequitable to

¹ Fortunately, bad debt is addressed in A.B. 251 under s. 77.585(1g). COST recommends using the following language to more broadly apply all rights and duties a seller has in Wisconsin to marketplace providers: "A marketplace provider shall be entitled to any credits, deductions, or adjustments to sales price provided to a marketplace seller, in addition to any such adjustments provided directly by the marketplace provider. This section pertains to, but is not limited to, adjustments such as bad debt deductions, discounts, coupons, rebates, etc. In addition, a marketplace provider shall be entitled to any [seller/vendor] compensation available to other sellers. A marketplace provider has the same rights and duties as a marketplace seller, including the handling of refunds, and maintenance and acceptance of certificates from purchasers claiming a transaction is not taxable."

impose joint liability on marketplace sellers that otherwise know the marketplace provider is required to collect and remit that tax. Finally, COST recommends s. 77.523(4) be clarified to address errors from insufficient or incorrect information² and that the liability relief in s. 77.523(4) should be independent of s. 77.523(3) and not phased out under s. 77.523(5). A marketplace provider that makes reasonable attempts to ascertain information from a marketplace seller should always be allowed liability relief, with the marketplace seller and purchaser remaining liable for the tax on such a sale.

Summary

COST appreciates the opportunity to provide this Committee with comments and suggested changes to improve A.B. 251's proposed marketplace provider provisions. The recommended changes to the definition of marketplace provider and related provisions requiring providers to collect and remit Wisconsin's state and local sales and use taxes will facilitate compliance and mitigate potential legal issues with the proposed law.

Please contact me if you have any additional questions. COST is willing to work with all interested parties to address A.B. 251's marketplace provider provisions.

Sincerely,



Fred Nicely

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director

² The following language is recommended: A marketplace provider shall be relieved of liability under this [section] for failure to collect and remit sales or use tax on sales facilitated for marketplace sellers, excluding related entities as defined in [cite code section], when the marketplace provider demonstrates to the satisfaction of the department that the provider relied on insufficient or incorrect information from the marketplace seller that was necessary to determine taxability or proper sourcing of a transaction. A marketplace seller is not relieved of liability under this subsection for transactions for which it provides insufficient or incorrect information provided the marketplace provider demonstrates a reasonable attempt to obtain the information from the marketplace seller.



June 6, 2019

Senator Dale Kooyenga
Room 310 South
Madison, WI 53707

Re: Senate Bill 243/Assembly Bill 251

Dear Senator Kooyenga:

We are writing to express our concerns with the provisions in A.B. 251 that would potentially:

- (1) capture unintended entities within the scope of a marketplace provider;
- (2) apply marketplace collection to all services, rather than only taxable services;
- (3) require a "marketplace provider" to collect sales taxes and a "marketplace seller" to collect other taxes, fees, and charges on the same transactions;
- (4) not sufficiently allow the waiver of marketplace collection for reliable, large marketplace sellers;
- (5) result in excessive audits of marketplace sellers;
- (6) confuse whether the marketplace provider or marketplace seller has certain rights and duties, including tax collection and audit responsibility; and
- (7) permit individuals to file false claims lawsuits against marketplace providers.

Currently, the seller of taxable goods and services has the obligation to collect and remit sales and use taxes in Wisconsin, as well as other applicable transaction-based taxes, such as 911 fees. Language in A.B. 251 would shift that obligation from the seller to a marketplace provider, i.e., the provider of a platform over which those sales take place. We do not object to the purpose of the legislation, i.e., to capture new tax revenue from out-of-state sellers. This objective can be achieved, however, without upending the well-established processes companies such as ours have put in place over the years to accurately collect and remit taxes in Wisconsin. We have seven general concerns.

First, A.B. 251's definition of marketplace provider should be tightened-up to ensure that it does not capture unintended parties. The definition to clarify that a person can only be a 'marketplace facilitator if they 1) facilitate a sale and 2) collects the payment either directly or indirectly through 3rd parties. While we believe this is the intended result, the sentence structure is unclear and should be modified for clarity. See Appendix Item 1 for proposed language.

Second, without further clarification, A.B. 251 may require marketplace providers to collect sales tax if they facilitate sales of any services, rather than specifically enumerated taxable services. To remedy these potential consequences and to be consistent with the reference to “a service specified under s. 77.52(2)(a) within the definition of ‘marketplace provider’”, all references to “services” should clarify that they must be limited to those that are taxable under sec. 77.52(2)(a), including the references to services at secs. 77.51(11d) and 77.51(13)(q).

Third, this bill applies to only sales and use taxes under Chapter 77, Subchapter III. Accordingly, when the marketplace provider issues a bill for taxable services, it will likely include just the sales taxes – leaving the seller to issue a separate bill for any other taxes or other government-authorized fees that are due. That is duplicative, inefficient, and highly confusing to customers. For the transactions that are covered, this bill should require the marketplace provider to bill for all applicable government taxes and fees imposed on the transaction (e.g., the taxes, fees, and charges identified at Wis. Admin. Code Tax 11.26). Take, for example, telecommunications services. When a provider of landline services bills its customers for the service, it is required to collect and remit 911 fees pursuant to sec. 256.35, in addition to Wisconsin sales taxes. These fees vary from county-to-county. In the case of video services under sec. 66.0420, municipalities impose a franchise fee between zero and five percent of gross revenue, and these fees can be (and typically are) billed directly to the customer. While these localized fees are complicated to bill, they are being accurately billed today. The issuance of multiple bills to each customer would complicate sales transactions and confuse customers. Moreover, marketplace sellers would have to issue invoices while also lacking the benefit of easy access to the customer information. Thus, the second invoices could be inaccurate and inadequate.

Fourth, A.B. 251 should include a waiver provision that allows a marketplace provider and a marketplace seller to agree that the marketplace seller will continue to collect and remit taxes and fees. This would allow industries the needed flexibility to ensure that complex services continue to be accurately billed, without jeopardizing any state or local tax revenue or customer relationships. The waiver could be at the discretion of the tax commissioner for relatively small sellers, but should be automatic for reliable, large sellers (i.e., those that are publicly-traded with over \$1 billion in annual gross revenue that are already registered to collect and remit Wisconsin taxes). A simple amendment could establish this waiver process so that business-to-business agreements that exist today could continue to be used to ensure tax is properly collected and remitted. See Appendix Item 2 for proposed language.

Fifth, the liability relief provisions at secs. 77.523(2) and 77.523(4) should be amended to protect marketplace sellers from burdensome audits and unreasonable tax liabilities. An unintended consequence of A.B. 251’s language is that if the marketplace provider does not provide notice to the marketplace seller, which the seller has no control over, then the seller can still be held liable under audit. The audit liability should rest clearly upon only the entity collecting and remitting the tax. See Appendix Item 3 for proposed amended language for both sections.

Furthermore, marketplace sellers should have the opportunity to correct any insufficient or incorrect information given to marketplace providers. Otherwise, the marketplace seller would

have no certainty that it is relieved from audit liability years after the transaction. A marketplace should be put on notice, at the time of the transaction, that it did not provide sufficient information to the provider. See Appendix Item 4 for proposed language.

Sixth, marketplace providers should be given all of the rights and obligations of their marketplace sellers, not just the bad debt deduction provided at s. 77.585(1g), which we believe should rather be denoted s. 77.585(1)(g). Otherwise, tax administration would become complicated and inefficient. Disputes could arise between marketplace providers and sellers as to which party has certain rights and obligations. The marketplace providers should have all of the rights and obligations because they are the parties required to collect and remit the tax and are the parties subject to audit. See Appendix Item 5 for proposed language.

Seventh, A.B. 251's prohibition on class action lawsuits against marketplace providers at Sec. 77.523(7) should also include a prohibition on "qui tam or false claims actions" against marketplace providers. Numerous states permit individuals to file lawsuits against companies for the alleged underpayment of taxes and allow the individuals to reap inordinate rewards. Tax liability collection actions should instead be pursued by tax authorities via normal audit procedures. Moreover, qui tam or false claims actions are especially ill-suited against marketplace providers because they are not in total control of the descriptions and characterizations of the myriad of goods and services of which sales they facilitate through numerous marketplace sellers. See Appendix Item 6 for proposed language.

Thank you for considering these general comments. We acknowledge that several states have adopted, and are currently considering, similar proposals, and we believe there are national implications to the language Wisconsin ultimately adopts. We have developed specific amendments to address the concerns raised in this letter, as well as a few others not described here. We believe A.B. 251's problems can be avoided with modest changes to the bill's language. We would welcome the opportunity to continue working on this legislation with all interested parties.

Sincerely,



Scott T. VanderSanden
President AT&T Plains States



Adam Raschka
Regional Senior Director
Charter Communications

CC: Representative Jessie Rodriguez
Members of the Assembly Ways and Means Committee

APPENDIX

Item 1. Proposed change to marketplace provider definition under 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 specified service under s. 77.52(a) and who, through agreements or arrangements with 3rd parties, directly or indirectly, ~~who are collecting~~ collects payment from the purchaser and ~~transmitting~~ transmits that payment to the seller, regardless of whether the person receives compensation or other consideration in exchange for the services provided by the person.

Item 2. Proposed language to expand the sec. 77.52(3m) waiver provision:

All transactions of a marketplace seller where a waiver is approved, provided the following requirements are met:

- a. The marketplace provider submits a waiver application to the Department of Revenue;
- b. Both the marketplace provider and the marketplace seller subject to the waiver agree that the marketplace seller will collect and remit all applicable taxes and fees and the marketplace provider collects the applicable tax registration numbers from the marketplace seller;
- c. The marketplace seller who agrees to collect and remit all applicable taxes and fees provides evidence to the marketplace provider that it is registered under s. 73.03(50); and
- d. The Department of Revenue approves the waiver application. The Department of Revenue has the authority to promulgate regulations for applying, processing a waiver for approval, and the denial of a waiver.

All the transactions of a marketplace seller shall be subject to a waiver without the pre-approval of the Department of Revenue where the conditions in [Subsections a through c above] are met and the marketplace seller is able to certify the following:

- a. It has annual U.S. gross sales over \$1 billion, including the gross sales of any related entities; and,

- b. The seller or a related entity is publicly traded on at least one major stock exchange.

This waiver shall be valid at the time the marketplace provider submits the waiver application to the Department of Revenue that includes the information required to be certified in this Subsection.

For all transactions excluded under [the above subsection], the tax levied under Chapter 77, Subchapter III, General Sales and Use Tax, including [other applicable taxes or fees directly imposed on consumer from a transaction, such as franchise fees, and 911 charges], shall be the responsibility of the marketplace seller and the seller must collect and remit such taxes. The marketplace provider is not responsible for collecting and remitting the taxes on such transactions and shall be relieved of liability for any taxes or associated penalties and interest that qualify for exclusion under this section.

Item 3. Proposed changes to liability provisions under Sec. 77.523(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. Except for transactions for which a marketplace provider seeks relief under sub. (4), a marketplace provider and marketplace seller shall not be subject to audit or may be audited and held liable on marketplace provider transactions. for tax on the sale.~~ Except for transactions for which a marketplace provider seeks relief under sub. (4), a marketplace provider and marketplace seller shall not be subject to audit or may be audited and held liable on marketplace provider transactions.

Item 4. Proposed changes to Sec. 77.523(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, provided the marketplace provider demonstrates a reasonable attempt to obtain the information from 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).

Item 5. Proposed addition to a seller's rights and obligations:

A marketplace provider shall be entitled to any credits, deductions, or adjustments to sales price provided to a marketplace seller, in addition to any such adjustments provided directly by the marketplace provider. This section pertains to, but is not limited to, adjustments such as bad debt deductions, discounts, coupons, rebates, etc. In addition, a marketplace provider shall be entitled to any seller compensation available to other sellers. A marketplace provider has the same rights and duties as a marketplace seller, including the handling of refunds, and maintenance and acceptance of certificates from purchasers claiming a transaction is not taxable.

Item 6. Proposed changes to Sec. 77.523((7):

No person may bring a class action, qui tam action or false claims action against a marketplace provider or marketplace seller 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.