



formerly the
Wisconsin Innkeepers Association

Serving the lodging
industry for more than
100 years

May 30, 2019

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

From: Trisha A. Pugal, CAE
President, CEO

RE: Support Requested for SB 243 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 SB 243, a bill ensuring that "Marketplace Providers" would no longer be able to by-pass Wisconsin law and avoid collecting and remitting state and county sales tax, and 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 major levels of government in our state is not just an Airbnb issue. There are a growing number of platforms that are now being required to remit taxes on sales in a growing number of other states, now that the Wayfair decision by the U.S. Supreme Court paved the way to addressing nexus for taxation in states.

SB 243 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. Estimates on the amount of new revenue that will be collected from Marketplace Providers is significant for the state, and likely for counties as well, 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. SB 243 will make sure that everyone enjoying the benefits of promotions that draw travellers to an area will contribute their fair share to the costs, like other lodging businesses. This bill includes clarity that taxes to be paid by the Marketplace Provider include local room tax, to prevent any potential confusion.

Upon learning of the proposed 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

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branded properties with traveler reservations, with every one of their branded properties already licensed with the DOR and collecting and remitting the taxes on the FULL price paid by the traveler. There is no more tax revenue to gain under this model, and so language was addressed that would allow for a fair waiver process for eligible Hotel Brands to apply for that also addressed the DOR's interest in ensuring that taxes were remitted on the FULL sales amount paid by the purchaser. This provides a reasonable, but not guaranteed, 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, SB 243 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.

Please support SB 243.



May 30, 2019

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

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

RE: Support of SB 243 on Marketplace Providers

Thank you for the opportunity to speak this afternoon.

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 SB 243 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 SB 243.



To: Chairman Marklein and Members of the Senate Committee on Agriculture, Revenue and Financial Institutions

Date: May 30, 2019

From: Braden Cox, Director, US State & Local Public Policy

Re: Support for SB 243

Chairman Marklein and Members of the Committee:

I write to express Amazon's support for Senate Bill 243. SB 243 would require marketplace providers to serve as a single point of administration for collecting and remitting sales tax from Wisconsin customers for sellers making sales on a marketplace.

We appreciate the leadership of Senator Kooyenga and Representative Rodriguez in heading this effort.

You probably 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.

We believe this legislation will level the playing field for all retailers, an outcome that we have long supported. To that end, we collect and remit state sales tax for our U.S.-based retailers in all 45 states that impose a statewide sales tax, including Texas. Amazon also complies with all the states that currently have marketplace laws in effect like that under consideration in SB 243. We are the only major internet marketplace that has complied with these marketplace collection laws in these states from the first day of their effective dates.

We respectfully encourage your support for SB 243. Should you have any questions regarding our position, please feel free to contact me at bradenc@amazon.com or 202-442-2900.

Thank you for the opportunity to express our support.

Sincerely,

A handwritten signature in black ink that reads "Braden Cox". The signature is written in a cursive, flowing style.

Braden Cox

Good Afternoon Chairman Marklein and members of the committee. My name is Maria Guerra Lapacek. I serve as the Assistant Deputy Secretary for the Department of Revenue. I am before you today to discuss 3 technical issues the Department would like to raise concerning SB 243.

The Department fully supports the purpose of the bill which seeks to fully enforce our sales and use tax laws with regard to out-of-state marketplace providers. We have three suggestions which we believe will help strengthen our ability to enforce this law fully and fairly.

First, we seek the inclusion of language that will clarify that Marketplace Sellers should be held accountable if marketplace sellers are uncooperative in their obligation to provide marketplace providers with sufficient and accurate information. The bill exempts Marketplace Providers of liability if Marketplace Sellers are not providing them correct information. In other states where Marketplace providers are being exempt from liability for actions of Marketplace sellers, those states have added language holding Marketplace sellers accountable.

Second, SB 243 has a specific prohibition against class action law suits. However, the Wisconsin code already has a general prohibition on lawsuits being brought regarding taxes administered by the state. We believe the specific prohibition in SB 243 could have the effect of calling into question the broad applicability of 803.08(14).

Third, DOR suggests that we be granted rule-making authority to ensure industries that should be taxed are being taxed fairly, while industries that meet the definition, but are otherwise paying sales taxes on those taxable goods/services are not double taxed. For example, subsection b of 77.52 (3m) creates a waiver for lodging and restaurant franchises who facilitate the on-line sale where the local franchisee is collecting and remitting the sales taxes. There may be other examples that aren't contemplated where rule-making could be helpful.

The Income, Sales and Excise Tax Division of our department, however, has significant concerns with being able to accurately calculate the income tax rebate portion of this bill. As it is currently drafted, it would be near impossible for the Department to effectuate without having to generate estimates that could be extremely inaccurate. Additionally, I recommend the legislature work with the Governor's office on the income tax policy portion.

I along with Nate Weber, Manager of our Technical Services Bureau of the Income, Sales, and Excise Tax Division, is available for questions.

Thank you.



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Committee on Agriculture, Revenue and Financial Institutions Hearing

Testimony SB 243 – Marketplace Providers

Susan Quam, Executive Vice President

May 30, 2019

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 processes 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 inquiry.

Thank you for the opportunity to provide information on the restaurant industry, and how this bill will provide clarity and a clear path of responsibility.



JESSIE RODRIGUEZ

STATE REPRESENTATIVE ★ 21ST ASSEMBLY DISTRICT

SB 243: Sales and Use Tax Collections for Marketplace Providers and Reductions in Individual Income Tax Rates

Testimony of State Representative Jessie Rodriguez

Senate Committee on Agriculture, Revenue, and Financial Institutions

May 30, 2019

Chairman Marklein and members of the Senate Committee on Agriculture, Revenue and Financial Institutions, thank you for the opportunity to provide testimony in support of Senate Bill 243, legislation that will update Wisconsin's tax law to ensure marketplace providers are properly collecting and remitting sales and use tax based on the Supreme Court decision in *South Dakota v. Wayfair* and in turn, reducing 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 for what we call 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 misinterpreted 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.

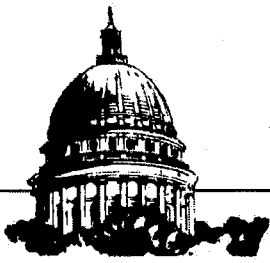


JESSIE RODRIGUEZ

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. This bill does not increase tax obligations but rather increases tax revenue.

Anytime Wisconsin has a chance to increase revenue while simultaneously reducing taxes is an opportunity we must seize. 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

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May 30, 2019

TO: Members of the Senate Committee on Agriculture, Revenue and Financial Institutions
FR: Senator Dale Kooyenga
RE: Senate Bill 243

Thank you for holding a public hearing on Senate Bill 243, 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. SB 243 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 also 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 368 was a permanent reduction to the individual income tax rates, it was interpreted as a one-time reduction in tax year 2019. SB 243 addresses this issue by making 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.

SB 243 will provide clarity for businesses having to comply with the impact of *Wayfair v. South Dakota*, increase state and local revenue, and lower income taxes for individuals. Thank you again for hearing SB 243 and I respectfully ask for your support.