

New Wisconsin Law Requires Marketplace Providers Meeting Economic Nexus Thresholds to Collect Tax Beginning October 1, 2019

Overview

On July 3, 2019, Governor Evers signed Assembly Bill 251¹ (2019 Wisconsin Act 10 ("Act 10")).² Act 10 requires marketplace providers meeting certain economic nexus thresholds to collect and remit sales tax. This Tax Alert discusses certain provisions of Act 10.

Sales Tax from Third Parties (Marketplace Providers)

In response to the United States Supreme Court's decision in *South Dakota v. Wayfair*,³ Act 10 imposes sales and use taxation on marketplace providers completing over \$100,000 in sales or 200 or more transactions in Wisconsin on an annual basis.⁴ The tax is imposed on marketplace providers beginning on October 1, 2019.⁵ Act 10 defines marketplace providers as "any person who facilitates a retail sale by a seller by listing or advertising for sale by the seller, in any manner, tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or a service specified under s. 77.52 (2) (a) and, who directly or indirectly, through agreements or arrangements with 3rd parties, processes the payment from the purchaser for the retail sale, regardless of whether the person receives compensation or other consideration in exchange for the services provided by the person."⁶

Under Act 10, a marketplace provider is liable for the tax imposed on the sale price charged to the purchaser, including any amount charged by the provider for the facilitation of the sale.⁷ If the activities of the provider operate under a hotel, motel, or restaurant brand name, the marketplace provider may submit an application to request a waiver from collecting and remitting tax on sales.⁸ The waiver may be accepted if there is evidence that the marketplace sellers have a history of reliably collecting and remitting sales tax to the Wisconsin Department of Revenue ("Department") or there is other evidence the sellers will reliably collect and remit tax.⁹

Act 10 further requires marketplace providers to obtain and keep all exemption certificates from a purchaser claiming an exemption for a sale facilitated by the provider.¹⁰ Marketplace providers must collect and remit tax on a sale on behalf of a marketplace seller, unless a waiver has been granted.¹¹ The marketplace provider is responsible for notifying the marketplace seller that it is collecting and remitting the tax.¹²

Lastly, Act 10 outlines audit procedures that may be applicable by the Department. Pursuant to Act 10, the Department of Revenue may audit marketplace providers to ensure compliance and impose any unfulfilled liabilities. The marketplace provider is liable for collection and remittance of tax and will be relieved of this liability only if evidence is provided to the Department that the error is due to insufficient or incorrect information provided by the

¹ A.B. 251, 2019-2020 Sess. (Wis. 2019). A copy of the assembly bill is accessible [here](#).

² Act of July 3, 2019, Act 10, 2019 Wis. Acts. A copy of the adopted law is accessible [here](#).

³ Wisconsin Legislative Council Amendment Memo (2019 A.B. 251), available at <https://docs.legis.wisconsin.gov/2019/related/lcamendmemo/ab251.pdf>.

⁴ Act 10, sec. 3, amending Wis. Stat. § 73.03(71)(a).

⁵ Act 10, sec. 4, amending Wis. Stat. § 73.03(71)(a)(2).

⁶ Act 10, sec. 11, creating Wis. Stat. § 77.51(7i).

⁷ Act 10, sec. 22, creating Wis. Stat. § 77.52(3m)(a).

⁸ Act 10, sec. 22, creating Wis. Stat. § 77.52(3m)(b).

⁹ Act 10, sec. 22, creating Wis. Stat. § 77.52(3m)(c).

¹⁰ Act 10, sec. 23, creating Wis. Stat. § 77.52(14)(c).

¹¹ Act 10, sec. 24, creating Wis. Stat. § 77.523(1)(A).

¹² Act 10, sec. 24, creating Wis. Stat. § 77.523(1).

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seller to the provider, unless the seller and provider are related entities.¹³ In situations where, the seller provided insufficient or incorrect information to the marketplace provider, the seller may be subject to audit and held liable for the tax.¹⁴

Considerations

Potentially affected taxpayers should consult with their tax advisers to analyze the potential impact on their filing requirements and Wisconsin tax liabilities.

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¹³ Act 10, sec. 24, creating Wis. Stat. § 77.523(4).

¹⁴ Act 10, sec. 24, creating Wis. Stat. § 77.523(4), (2).