

**Report 20-20
October 2020**

Estimate of Additional Sales and Use Tax Revenue and Determination of Certain Individual Income Tax Rates

Wisconsin Department of Revenue

STATE OF WISCONSIN



Legislative Audit Bureau ■

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Wisconsin Department of Revenue

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Joe Chrisman
State Auditor

October 30, 2020

Senator Robert Cowles and
Representative Samantha Kerkman, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Senator Alberta Darling and
Representative John Nygren, Co-chairpersons
Joint Committee on Finance
State Capitol
Madison, Wisconsin 53702

Dear Senator Cowles, Senator Darling, Representative Kerkman, and Representative Nygren:

As required by s. 73.03 (71) (d) 2., Wis. Stats., we have completed a review of the Department of Revenue's (DOR's) estimate of additional sales and use tax revenue and its determination of certain individual income tax rates. 2019 Wisconsin Act 10 created statutory requirements for DOR to estimate additional reported sales and use tax revenue for the period beginning October 1, 2019, and ending September 30, 2020, resulting from South Dakota v. Wayfair, Inc. (Wayfair), which expanded the State's authority to require remote sellers to collect and remit sales or use tax on sales delivered into Wisconsin.

In addition, as required by 2019 Wisconsin Act 10, and effective January 1, 2020, DOR required that marketplace providers collect and remit sales or use tax on taxable sales delivered into Wisconsin that the marketplace provider facilitates on behalf of a marketplace seller. DOR also was required to determine the extent to which certain individual income tax rates may be reduced beginning for the 2020 tax year to decrease individual income tax revenue by the amount estimated.

DOR estimated that the additional sales and use tax revenue reported to it from remote sellers and marketplace providers for the period beginning October 1, 2019, and ending September 30, 2020, was \$257.3 million. DOR then determined that the first and second individual income tax rates may be reduced from 4.00 percent to 3.54 percent and from 5.21 percent to 4.65 percent, respectively, to reduce individual income tax revenue by \$256.4 million, which was the amount closest to DOR's estimate without exceeding it. After performing our review, we found that DOR's estimate and tax rate determination, as rounded to the hundredth decimal place, appeared reasonable.

We appreciate the courtesy and cooperation extended to us by DOR staff during our review.

Respectfully submitted,



Joe Chrisman
State Auditor

JC/ES/ss

Estimate of Additional Sales and Use Tax Revenue and Determination of Certain Individual Income Tax Rates ■

Sales and use tax collections were \$5.8 billion in FY 2019-20.

The Wisconsin Department of Revenue (DOR) is responsible for administering Wisconsin sales and use taxes. Wisconsin sales tax is a 5.0 percent tax imposed on the sale price of taxable retail sales in Wisconsin. Wisconsin use tax is a 5.0 percent tax imposed on the purchase price of taxable products or taxable services that are stored, used, or consumed within Wisconsin, and upon which a Wisconsin sales or use tax has not previously been paid. Sales and use tax applies to sales of tangible personal property, certain coins and stamps, certain leased property affixed to realty, certain digital goods, and specified services. DOR requires sellers subject to sales or use tax to collect and remit sales and use tax to DOR at least annually. Generally, sales and use tax returns must be filed by the last day of the month following the end of the reporting period. As shown in Table 1, sales and use tax collections were \$5.8 billion in fiscal year (FY) 2019-20.

Table 1

Sales and Use Tax Collections, by Fiscal Year¹
(in millions)

Fiscal Year	Total	Dollar Change	Percentage Change
2015-16	\$5,065.8	–	–
2016-17	5,223.9	\$158.1	3.12%
2017-18	5,448.1	224.2	4.29
2018-19	5,695.5	247.4	4.54
2019-20	5,836.2	140.7	2.47

¹ As reported in the State's Annual Fiscal Report.

**Beginning October 1, 2018,
DOR required remote sellers
to collect and remit sales or
use tax on sales of taxable
products delivered into
and services provided in
Wisconsin.**

Prior to October 1, 2018, Wisconsin sales and use tax requirements were only imposed on sellers with a physical presence within the State. However, in June 2018, the United States Supreme Court ruled on South Dakota v. Wayfair, Inc. (Wayfair). The Wayfair decision expanded the State's authority to require remote sellers, which are out-of-state sellers without a physical presence in the State, to collect and remit sales or use tax on sales delivered into Wisconsin. To allow time for new filers to register and to align with other sales and use tax filings, DOR required remote sellers to collect and remit sales or use tax on sales of taxable products delivered into and services provided in Wisconsin beginning October 1, 2018.

**Beginning January 1, 2020,
DOR required marketplace
providers to collect and
remit sales or use tax.**

In addition, as required by 2019 Wisconsin Act 10, DOR required that, beginning on January 1, 2020, marketplace providers collect and remit sales or use tax on sales of taxable products delivered into and services provided in Wisconsin that the marketplace provider facilitated on behalf of a marketplace seller. As defined in s. 77.51 (7i), Wis. Stats., a marketplace provider facilitates a retail sale by a seller by listing or advertising the sale for the seller and processing the payment from the purchaser.

Estimate and Determination

DOR is statutorily required to estimate the additional reported sales and use tax revenue from remote sellers resulting from the Wayfair decision and from marketplace providers and to determine certain individual income tax rates.

2019 Wisconsin Act 10 created statutory requirements for DOR to estimate the additional reported sales and use tax revenue from remote sellers resulting from the Wayfair decision and from marketplace providers, and to determine certain individual income tax rates. Under s. 73.03 (71) (a), Wis. Stats., DOR was required to estimate the amount of additional revenue reported to it by remote sellers as a result of the Wayfair decision and by marketplace providers for the period beginning October 1, 2019, and ending September 30, 2020. Under s. 73.03 (71) (b) 2., Wis. Stats., beginning for the 2020 tax year, DOR also was required to determine the extent to which the first and second individual income tax rates in each bracket shown in Table 2 may be reduced to decrease individual income tax revenue by the amount estimated. In making its tax rate determination, DOR was required to apply 50 percent of the estimate to reduce the first individual income tax rate and 50 percent of the estimate to reduce the second individual income tax rate.

Table 2

Wisconsin Individual Income Tax Brackets with Current Tax Rates Tax Year 2020¹

Bracket	Current Tax Rate ²	Wisconsin Individual Income Tax Brackets		
		Single or Head-of-Household	Married Filing Joint	Married Filing Separate
1 st	4.00%	Less than \$11,760	Less than \$15,680	Less than \$7,840
2 nd	5.21	\$11,760 to \$23,520	\$15,680 to \$31,360	\$7,840 to \$15,680
3 rd	6.27	\$23,520 to \$258,950	\$31,360 to \$345,270	\$15,680 to \$172,630
4 th	7.65	Over \$258,950	Over \$345,270	Over \$172,630

¹ Tax year 2020 is the taxable year that begins after December 31, 2019, and before January 1, 2021.

² Tax rates in effect before considering DOR's determination under s. 73.03 (71) (b) 2., Wis. Stats.

Under s. 73.03 (71) (c) 2., Wis. Stats., DOR was required to submit its estimate of additional reported sales and use tax revenues and its determination of certain individual income tax rates to the secretary of the Department of Administration, the Joint Committee on Finance, the Governor, and the Legislative Audit Bureau, no later than October 20, 2020.

To estimate the amount of additional reported sales and use tax revenues from remote sellers as a result of the Wayfair decision for the period beginning October 1, 2019, and ending September 30, 2020, DOR used its tax return database to obtain data on tax filers located outside of Wisconsin that filed sales and use tax returns with DOR since July 1, 2018. DOR reviewed the data to remove any tax filers that did not appear to be new as a result of the Wayfair decision and then estimated sales and use tax that had yet to be reported for September 2020. This estimate also included marketplace providers without a physical presence in Wisconsin.

Further, DOR reviewed the *2020 Edition of the Online Marketplace Report* by Digital Commerce 360 to identify marketplace providers that were not already identified as remote sellers for the period beginning October 1, 2019, and ending September 30, 2020. DOR then used its tax return database to obtain the reported sales and use tax revenue for these marketplace providers. This estimate included marketplace providers with a physical presence in Wisconsin that facilitated sales on behalf of marketplace sellers. DOR added the specific marketplace provider's sales and use tax estimate to the remote seller's sales and use tax estimate to calculate the total estimate DOR used to determine the tax rate reduction.

DOR used its tax rate simulation program to determine the extent to which the first and second individual income tax rates may be reduced for the 2020 tax year to decrease individual income tax revenue by the amount of estimated additional sales and use tax revenue. The simulation program used tax year 2018 individual income tax return data, which were the most recent data available, and economic factor adjustments, such as inflation. In the simulation program, DOR staff adjusted the first and second individual income tax rates, rounded to the hundredth decimal place, until the decrease in individual income tax amounts for tax year 2020 was closest to the estimate without exceeding it when also applying 50 percent to reduce the first individual income tax rate and 50 percent to reduce the second individual income tax rate.

DOR's estimate of additional reported sales and use tax revenue was \$257.3 million.

As shown in the Appendix, DOR estimated that total additional reported sales and use tax revenue for the period beginning October 1, 2019, and ending September 30, 2020, from remote sellers as a result of the Wayfair decision and from marketplace providers, was \$257.3 million. Of this amount, \$121.9 million is based on sales and use tax information from specifically identified marketplace providers.

Beginning for the 2020 tax year, DOR determined the first and second individual income tax rates may be reduced to 3.54 percent and 4.65 percent, respectively.

DOR determined that beginning for the 2020 tax year, which is the taxable year beginning after December 31, 2019, and before January 1, 2021, the first individual income tax rate may be reduced from 4.00 percent to 3.54 percent and that the second individual income tax rate may be reduced from 5.21 percent to 4.65 percent. As shown in Table 3, these tax rates result in a reduction in individual income tax revenue of \$256.4 million, which is the amount closest to DOR's \$257.3 million estimate, without exceeding it. These tax rates also result in 50 percent of the reduction being applied to the first individual income tax rate and 50 percent of the reduction being applied to the second individual income tax rate.

Table 3

**Total Reduction in Individual Income Revenue
Based on Changes in Tax Rates¹**

First Bracket: Individual Income Tax Rate	Second Bracket: Individual Income Tax Rate	Total Revenue Reduction (in millions)
3.55%	4.66%	\$251.3
3.55	4.65	253.6
3.54	4.66	254.1
3.54	4.65	256.4²
3.54	4.64	258.6
3.53	4.65	259.1
3.53	4.64	261.4

¹ Based on the DOR determinations under s. 73.03 (71) (b) 2., Wis. Stats.

² The amount closest to DOR's estimate without exceeding it when also applying 50 percent to reduce the first individual income tax rate and 50 percent to reduce the second individual income tax rate.

Review Results

As required by s. 73.03 (71) (d) 2., Wis. Stats., we reviewed the estimate and resulting tax rate determination reported to us by DOR. To complete our review, we:

- reviewed assumptions DOR used in the estimate of the sales and use tax amounts reported to it by remote sellers as a result of the Wayfair decision and by marketplace providers;
- assessed the reasonableness of the data obtained from DOR's tax return database; and
- reviewed the reasonableness and results of the simulation used by DOR to determine the reduction in individual income tax rates.

If our review were to result in a different tax rate determination, s. 73.03 (71) (d) 2., Wis. Stats., requires the Joint Committee on Finance to determine which tax rates to apply beginning with the 2020 tax year by November 10, 2020.

In performing our review, we found that DOR's estimate was \$178.1 million higher than the \$79.2 million estimate from the period October 1, 2018, to September 30, 2019, which we reviewed in report 19-23. This increase is partially a result of the inclusion of \$121.9 million in reported sales and use tax from specifically identified marketplace providers in DOR's current estimate. As noted, marketplace providers began reporting sales and use tax effective January 1, 2020, and therefore, no reported sales and use tax from these marketplace providers was included in the prior-year estimate.

In addition, DOR's estimate of sales and use tax determined from the remote seller review, increased by \$56.2 million from DOR's estimate for the period October 1, 2018, to September 30, 2019. According to DOR staff, this increase is the result of several factors, including regular business growth for remote sellers, remote sellers who filed sales and use tax returns in Wisconsin for the first time from the period October 1, 2019, to September 30, 2020, and an increase in online sales by remote sellers as a result of the public health emergency that began in March 2020.

We found that DOR's estimate and tax rate determination, as rounded to the hundredth decimal place, appeared reasonable.

After performing our review, we found that DOR's estimate and its tax rate determination, as rounded to the hundredth decimal place, appeared reasonable. DOR rounded the tax rate to the hundredth decimal place to align with the presentation of tax rates in statutes.

Appendix ■



State of Wisconsin • DEPARTMENT OF REVENUE

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Tony Evers
Governor

Peter W. Barca
Secretary of Revenue

October 20, 2020

Joe Chrisman, State Auditor
Legislative Audit Bureau
22 E. Mifflin Street, Suite 500
Madison, WI 53703

Dear Mr. Chrisman:

Wis. Stat. § 73.03(71) requires the Department of Revenue to estimate additional sales and use tax revenue reported to the department as a result of the United States Supreme Court decision (*Wayfair*) that expands the state's authority to require out-of-state retailers and marketplace providers to collect and remit sales and use tax during the period beginning Oct 1, 2019 and ending September 30, 2020.

The department estimates the amount of additional revenue to be \$257.3 million for the 12-month period ending September 30, 2020. The estimate is based on tax amounts reported by filers who registered to collect taxes after the *Wayfair* decision and are located outside of the state. Additional revenue reported by marketplace providers is included in this amount as the marketplace provisions included in 2019 Wisconsin Act 10 took effect January 1, 2020. Some filers have both remote retail sales and third-party marketplace sales. The estimated additional revenue includes both sales channels. Other filers may have in-state retail sales and marketplace sales. In these cases, the department isolated the marketplace revenue from the previously reported taxable retail sales (some of which are conducted at physical locations in Wisconsin).

Wis. Stat. § 73.03(71) also requires the department to determine how much the 1st and 2nd individual income tax rates listed in each bracket may be reduced in tax year 2020 in order to reduce total income taxes by an amount equal to the estimated increase in sales tax revenue. The statutes require the department to calculate the rate reduction so that 50 percent of the estimation is used to reduce the 1st income tax rate listed in each bracket and the remaining 50 percent is used to reduce the 2nd income tax rate listed in each bracket. The rate changes approved by the Joint Committee on Finance for tax year 2019 were only for that specific tax year. The rates the department certifies below are for tax year 2020 and each tax year thereafter.

The department certifies that the 1st and 2nd rates will be reduced as follows:

Determination Tax Year 2020:		Estimated Individual Income Tax Reduction Amount		
1 st Rate Change	2 nd Rate Change	1 st Rate Impact	2 nd Rate Impact	Total Fiscal Effect
4.00% à 3.54%	5.21% à 4.65%	\$127.9 million	\$128.6 million	\$256.4 million

The determination was made by running simulations of rate changes on growth-adjusted tax year 2018 individual income tax returns to maximize the amount of tax relief across the two rates and maintaining the historical standard of keeping rates in terms of hundredths of a percent. Any further decrease in the individual income tax rates would result in the individual income tax reduction exceeding the estimated increase in sales and use tax amounts.

Sincerely,

Peter Barca
Secretary of Revenue