

Sales/Use/Indirect:

Wisconsin: Court Reverses Ruling to Hold Online Platform's Secondary Ticket Sales are Not Taxable

Wisconsin Tax Bulletin 225, Wis. Dept. of Rev. (4/24). The Wisconsin Department of Revenue (Department) released a bulletin that includes a summary of a 2024 opinion issued by the Dane County Circuit Court (Court) setting aside the Wisconsin Tax Appeals Commission's (Commission) 2023 decision [see Case No. 16-S-268, Wis. Tax. App. Comm. (2/28/23) and *State Tax Matters*, 2023-11, for more details on this 2023 ruling], and holding that an out-of-state company operating an online marketplace where tickets to sporting events, concerts, theater and other live entertainment services were bought and sold did *not* owe Wisconsin sales and use tax on the purchase price of tickets sold to events in Wisconsin during the prior periods at issue. The bulletin explains that the Court concluded that reasonable persons could disagree on whether terms like "selling" and "representing sellers" apply to "running an online marketplace," and that Wisconsin statutes using those terms are ambiguous. According to the bulletin, the Court concluded that the Commission erred by:

URL: <https://www.revenue.wi.gov/WisconsinTaxBulletin/225-04-24-WTB.pdf>

URL: <https://taxappeals.wi.gov/Documents/Decisions/2022-2023/StubHub%20Final%20RO.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230317_7.html

- Imposing sales tax under Wis. Stats. section 77.52, because reasonable persons could disagree about whether the online marketplace "sold" tickets;
- Interpreting the doctrine of the undisclosed principal to create sales tax liability for the online marketplace; and
- Imposing sales tax under Wis. Stats. section 77.51(13)(c), because reasonable persons could disagree about whether the online marketplace was a "representative" of ticket sellers.

Moreover, the Court apparently held that the online marketplace satisfied its burden to show that it owed no sales tax on the transactions at issue. The bulletin states that the Department intends to appeal this decision. Please contact us with any questions.

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