



This Week in State Tax (TWIST)

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Wisconsin: Ticket Reseller Liable for Sales Tax on Secondary Ticket Sales

The Wisconsin Tax Appeals Commission recently addressed whether an operator of an online ticket marketplace was liable for approximately \$8.5 million in Wisconsin sales and use tax (as well as additional penalties and interest over \$8.5 million) for the 2008-2013 tax years. These tax years were prior to the adoption of a Wisconsin law requiring marketplace providers to collect and remit sales tax. The taxpayer operated an online marketplace on which tickets to sporting events, concerts, theater and other live entertainment services were bought and sold on the secondary market. It was not known whether any original ticket purchaser had paid sales taxes on their purchases. Following an audit, the Department assessed the taxpayer for sales taxes on the full purchase price of tickets sold to events occurring in Wisconsin. It was not disputed that the taxpayer likely had Wisconsin nexus based on its contacts with the state. Instead, the dispute centered on whether the taxpayer was a “retailer” that was “selling” taxable admissions at retail in Wisconsin. In a lengthy decision, the Commission rejected the taxpayer’s arguments and concluded it was making sales at retail under Wisconsin law. Although the taxpayer argued that it had to meet the definition of a “retailer” to be required to pay sales tax, the Commission determined that it was not necessary for a person to be considered a retailer or deemed to be a retailer for its sales to be subject to tax. Although the Commission concluded that the taxpayer had not proven that the Department’s sales tax assessment was incorrect, it declined to impose the 25 percent negligence penalty, as it was not supported by the authorities in existence during the audit period according to the Commission. For more information on *Stubhub, Inc v. Wisconsin Department of Revenue*, please contact [Jill Nielsen](#).



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