

This Week in State Tax (TWIST)

January 20, 2026



Wisconsin: Appellate court holds ticket reseller liable for sales tax collection; also subject to penalty

In a recent opinion, the Wisconsin Court of Appeals ruled that a taxpayer operating an online marketplace for reselling tickets to live entertainment events was subject to sales tax during the period at issue (2008 – 2013). The taxpayer's online marketplace allowed holders of tickets to sporting events, concerts, theatre, or other live events to list their tickets for sale to other buyers. The website was used primarily by individuals rather than businesses, and the taxpayer did not buy tickets on its own behalf to sell through its platform. When a sale occurred, the buyer paid the ticketholder's listing price plus fees charged by the taxpayer, comprising a percentage of the sale price plus a logistics fee. Fees varied from sale to sale, depending partially on the method of ticket delivery. No evidence was presented that the ticket buyer or the taxpayer paid Wisconsin sales tax on the transactions, but the parties stipulated that it was "highly likely" that taxes were paid on the original ticket sales.

In 2014, the Wisconsin Department of Revenue audited the taxpayer and assessed taxes, interest, and penalties. The assessment included a 25 percent negligence penalty based on the Department's determination the taxpayer ignored guidance published in two tax bulletins from which the taxpayer should have understood its sales tax responsibility.

The taxpayer appealed to the Wisconsin Tax Appeals Commission, which ruled that the taxpayer was subject to Wisconsin tax for sales conducted through its website. The commission, however, found the taxpayer was not liable for the 25 percent penalty as it did not have notice of its tax obligation. The Commission disagreed with the taxpayer's argument that it was a "passive online marketplace," simply facilitating a sale and found it was more akin to a seller transferring tickets between ticketholders and buyers. In rejecting the penalty, the Commission stated that the taxpayer would not have understood itself to be a "ticket broker" as described in the published guidance. Both parties sought review in circuit court. After the circuit court ruled that the taxpayer was not subject to sales tax, the Department further appealed.

Under Wisconsin procedure, the Court of Appeals reviewed the decision of the Commission, both as to whether the taxpayer was responsible for sales tax on tickets sold through its website and was subject to the 25 percent penalty. On the first question, the court held the taxpayer was a seller within the meaning of Wisconsin law because it "...effected the sale [of tickets] by transferring the tickets in exchange for payment." The taxpayer was the only entity with which the buyer interacted, and it processed the transaction and payment, deducted its fees,

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and issued payment to the ticketholder. As such, the taxpayer was the seller in transactions occurring through its website.

The taxpayer also argued that because the state Marketplace Provider law was not enacted until 2019, the taxpayer was not subject to sales tax requirements during the tax years at issue here (2008 to 2013). The appellate court agreed with the Department that the Marketplace Provider law was not a substantive change in law but was intended to clarify that businesses like the taxpayer were subject to sales tax to reduce administrative burden and the potential for litigation. The appellate court noted that when an amendment is made to a statute, the meaning of which has been the subject of recent controversy, the amendment is more likely intended as a clarification of the law rather than a substantive change.

Finally, the appellate court agreed with the propriety of the 25 percent penalty assessment. The guidance at issue described the application of sales tax to admissions to live events, with an example referring to sales involving ticket brokers that did not have possession of the tickets. The appellate court determined the bulletin specifically described a transaction similar to the one conducted by the taxpayer and concluded that the taxpayer was a “ticket broker” within the meaning of the guidance. Please contact [John Vann](#) with questions on [StubHub Inc. v. Department of Revenue \(No. 2024AP455\)](#).

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