

## Sales/Use:

### Washington DOR Addresses Taxability of Food Delivery Services Involving Online Marketplaces

*Excise Tax Advisory 3223.2021*, Wash. Dept. of Rev. (5/7/21). The Washington Department of Revenue (Department) has released an advisory “to clarify the taxation of restaurant and grocery food delivery service transactions under identified circumstances” involving four potential parties (*i.e.*, the customer, marketplace facilitator or reseller, restaurant/grocer, and delivery partner) pursuant to three delineated “business models” – none of which addresses the traditional model where customers place orders directly with retailers, such as restaurants or grocers, that in turn deliver tangible personal property including food to customers either themselves or by hiring a third-party. Specifically, the advisory addresses resulting Washington business and occupation (B&O) and retail sales tax consequences under the following three business models:

**URL:** <https://taxpedia.dor.wa.gov/documents/current%20eta/3223.2021.pdf>

1. Marketplace Facilitator/Delivery Partner Business Model;
2. Marketplace Facilitator Employee Delivery Business Model; and
3. Resale Business Model.

Under the “Marketplace Facilitator/Delivery Partner Business Model,” a customer places an order from a restaurant or grocer listed on a marketplace facilitator’s marketplace; and under a contract with the marketplace facilitator, a third-party delivery partner picks up the tangible personal property from the restaurant/grocer and delivers it to the customer. The same circumstance applies under the “Marketplace Facilitator Employee Delivery Business Model,” except the marketplace facilitator’s employees pick up and deliver the tangible personal property to the customer. Under the “Resale Business Model,” a person purchases tangible personal property from a restaurant or grocer and resells and delivers the tangible personal property to customers either using its employees or by contracting with a delivery partner. The Department includes several working examples to help illustrate the resulting B&O and retail sales tax consequences under these three business models. Among its conclusions are that a marketplace facilitator facilitating sales of prepared food or groceries generally must collect Washington retail sales tax on the full selling price charged, and would be taxable for B&O tax purposes under the “service and other business activities” classification on its gross income. Please contact us with any questions.

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