

## Sales/Use:

### Washington: Marketplace Seller's In-State Inventory Created Physical Presence for B&O Tax Purposes

*Det. No. 19-0003, 40 WTD 093 (2021)*, Wash. Dept. of Rev., Admin. Rev. & Hrgs. Div. (6/25/21). In an administrative ruling involving an out-of-state company engaging in online sales with in-state customers through a third-party online marketplace facilitation service and through its own website, the Administrative Review and Hearings Division of the Washington Department of Revenue (Division) held that the company established nexus with Washington for state sales tax and business and occupation (B&O) tax purposes for the 2014 through 2017 tax periods (*i.e.*, pre-*Wayfair* periods) at issue, because it owned inventory (goods) that were stored at the marketplace facilitator's in-state distribution facility "pre-sale" and thus was physically present in Washington at the time of the online sale transactions. In this respect, the Division held that the company, rather than its marketplace facilitator, is the seller in the marketplace transactions that is responsible for collecting Washington retail sales taxes from in-state customers and paying retailing B&O taxes on the gross proceeds of the sales. In doing so, the Division explained that Washington's "Rule 193" makes clear that maintaining a stock of goods within Washington is sufficient to establish a physical presence, and that under its agreement terms with the marketplace facilitator, the inventory at issue remained the marketplace seller's property until delivered to the purchasers. Please contact us with any questions.

**URL:** <https://dor.wa.gov/sites/default/files/legacy/Docs/Rules/wtd/2021/40WTD093.pdf>

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