

Sales/Use/Indirect:

Texas: Mobile Restaurant Ordering and Payment Platform Provider Deemed a Marketplace Provider

Private Letter Ruling No. PLR20200218100745, Tex. Comp. (9/17/21). Referencing state law, including recently enacted legislation that amends the definition of “data processing service” under Texas Tax Code § 151.0035 [see S.B. 153 (2021), and previously issued Multistate Tax Alert for more details on these law changes], the Texas Comptroller of Public Accounts (Comptroller) explained that a taxpayer providing a mobile ordering and payment platform to restaurants that allows such restaurants to accept food orders from customers placed through a mobile application (APP) operated as a “marketplace provider,” while the APP itself constituted a “marketplace.” In doing so, the Comptroller held that under the provided facts:

URL: <https://star.comptroller.texas.gov/view/202109055L>

URL: <https://capitol.texas.gov/tlodocs/87R/billtext/pdf/SB00153H.pdf#navpanes=0>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-texas-enacts-law-amending-definition-data-processing-service-for-sales-and-use-tax-purposes.pdf>

- The taxpayer’s service fees (computed as a percentage of gross sales per week) and subscription fees constitute charges for taxable data processing services as defined under Texas Tax Code § 151.0035 in that they involve the compilation, storage, and manipulation of data for the restaurants;
- The taxpayer’s credit card fees (computed as a percentage plus a fixed dollar amount per transaction) are considered part of the taxable sales price of the service fees as charges for an expense that it incurs in providing its taxable services and thus also are taxable as data processing services as defined under Texas Tax Code § 151.0035; and
- The taxpayer’s setup fee charges to cover the initial installation and configuration of the equipment, including configuring the account and developing a digital version of a restaurant’s menu, also are considered taxable data processing services as defined under Texas Tax Code section 151.0035 in that they involve data entry, storage, and manipulation to configure and add a restaurant to the APP.

The Comptroller additionally explained that the taxpayer’s optional “offers fee” and “earned plus” fees, which provide featured ad placement to the restaurants’ clients and allow restaurants to issue reward points to customers as an incentive to order food, constitute nontaxable services under state law. Please contact us with any questions.

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