

Sales/Use/Indirect:

Washington DOR Issues Interim Statement on Treatment and Taxability of NFTs

Interim statement regarding the taxability of non-fungible tokens (NFTs), Wash. Dept. of Rev. (7/1/22). The Washington Department of Revenue (Department) issued an “Interim Guidance Statement” intended to provide general information related to the Washington business and occupation (B&O) and retail sales taxability of certain transactions involving non-fungible tokens (NFTs), along with related sourcing and apportionment-related guidance – noting that such guidance “does not intend to address any exemptions, exclusions, deductions, credits, or other incentives that may apply” and that it “anticipates conducting future stakeholder efforts with the goal of developing more permanent and comprehensive guidance.” The Department explains that to determine the proper tax treatment of a given transaction involving an NFT, it generally is critical to consider:

URL: <https://dor.wa.gov/interim-statement-regarding-taxability-non-fungible-tokens-nfts>

- Whether the transaction is comprised of multiple components or merely a digital code which grants the owner access to a digital good,
- The taxability of each underlying component, and
- The identity of the parties to the transaction (e.g., whether the purchaser is a consumer or reseller).

The Department also explains that the selling price of an NFT is measured by the consideration received by the seller, whether from the purchaser or a third party, and that if a seller receives cryptocurrency in exchange for an NFT, the value of the cryptocurrency tendered must be converted to US dollars as of the time of the sale.

Furthermore, the Department lists four basic types of arrangements involving NFTs and explains the resulting B&O tax implications of each – also opining on situations involving mixed transactions. The Department additionally addresses marketplaces that facilitate retail sales of NFTs and how they may qualify as market facilitators for Washington tax purposes. Provided examples help illustrate the Department’s stated tax treatment of NFTs and “taxpayers are encouraged to contact the Department for guidance in cases where the facts and circumstances comprising their business activities are not covered in this statement.” Please contact us with any questions.

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