



# This Week in State Tax (TWIST)

September 16, 2024



## Washington: Digital Ad Exchange Cannot Deduct Certain Expenses and Is Not a Marketplace

The Washington Department of Revenue Administrative Review and Hearings Division (Department) recently released a [ruling](#) that found a taxpayer operating a digital advertising exchange was subject to the state business and occupation (B&O) tax on the entirety of its gross income received from advertisers for sales of advertising space. The taxpayer used proprietary software to auction advertising space of publishers (e.g., app developers and websites) to advertisers and businesses. The taxpayer reported only the commissions it received from publishers as gross income on its B&O returns. On audit, the Department included all income of the taxpayer (including amounts paid for the purchase of the advertising and not just the amount it retained when it forwarded receipts to the publishers) on the basis that the definition of gross income did not allow for deductions for the cost of doing business.

In its petition for review, the taxpayer argued, among other things, that it was a marketplace facilitator when it sold the advertising space because it contracted with sellers to facilitate for consideration the sale of their products. As a marketplace facilitator, the taxpayer had an agency relationship with publishers, meaning that only its commissions were subject to the B&O tax.

In the ruling, the Department found that the taxpayer's business involved providing advertising services because it disseminated targeted digital advertisements to the most receptive audiences. As a provider of advertising services, the taxpayer would be subject to the B&O tax on its gross income, including amounts received to pay media outlets. It also found that the taxpayer did not meet the definition of a marketplace facilitator. A marketplace facilitator must contract with sellers to facilitate the making of "retail sales." The sale of advertising services and space are not considered retail sales. In addition, the taxpayer's agreements were with publishers, who were not classified as sellers of goods or services under the relevant statutes, meaning it could not be a marketplace facilitator. Based on these findings, the Department concluded that the taxpayer was required to report all gross income received from the sale of advertising space without deductions for business expenses. For information on Determination No. 22-0027 (released September 9, 2024), please contact [Michele Baisler](#).

Learn about us:



[kpmg.com](https://www.kpmg.com)