



This Week in State Tax (TWIST)

November 25, 2024



Texas: Comptroller Issues Letter Rulings on Physical and Electronic Marketplaces

The Texas Comptroller recently released a pair of letter rulings explaining the requirements of both physical and electronic marketplace providers.

In the first ruling, the Comptroller determined that a dealer of construction and mining equipment selling manufacturer warranties at its dealership was a marketplace provider responsible for collecting and remitting Texas sales tax on taxable sales. The manufacturer warranties, called “customer value agreements,” were offered by a subsidiary of the manufacturer; they provided protection for equipment and parts sold by the dealer. The Comptroller first noted that the sale of extended warranties or service policies are taxable in Texas. Next, the Comptroller reasoned that Texas’s definition of a “marketplace” includes both electronic and physical mediums; therefore, the dealership’s physical location served as a physical marketplace. Because the dealer was also processing payment for the warranties, the Comptroller concluded the dealer fit the definition of a “marketplace provider,” and as such has the rights and duties of a retailer, including collection of tax on warranties sold at its location.

In the second ruling, the Comptroller found a software and event planning company was a marketplace provider. The taxpayer provided three service offerings that enabled restaurants to offer food at external locations: popup, catering, and delivery.

- For popups, the taxpayer would arrange for one or multiple restaurants to sell food at a client-designated location using a taxpayer-provided POS software platform. The taxpayer charged the restaurants a fee for the popup and for use of the POS platform.
- For catering, the taxpayer coordinated and managed catering services between clients and a restaurant including ordering, scheduling, tracking, and payment. The taxpayer’s POS platform allowed restaurants to upload catering menus and prices and view order information. Customers booked their catering and made payment via the taxpayer’s website. The taxpayer charged the restaurants a fee for delivering the catering to the customer location, a fee for use of the platform, and a percentage fee based on the total order.
- For delivery, restaurants accepted orders placed via the taxpayer’s mobile application, and the taxpayer coordinated with a driver to pick up and deliver the food. The taxpayer charged restaurants a percentage fee based on the charge for the food delivered.

The Comptroller determined that the taxpayer was a marketplace provider in all scenarios described above. The taxpayer was determined to be providing an electronic marketplace in all instances involving the taxpayer’s POS platform or mobile application. Additionally, the popup events were considered physical marketplaces at which

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restaurants could make sales of tangible personal property. Further, the fees charged by the taxpayer to the restaurants were all considered taxable sales of data processing. In both rulings, the Comptroller explained that a marketplace provider must certify to the marketplace seller that the marketplace provider is collecting and remitting sales tax on sales occurring on the marketplace. For questions on [Private Letter Ruling No. 202410006L](#) and [Private Letter Ruling No. 202410007L](#), please contact [Karey Barton](#).

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