



# This Week in State Tax (TWIST)

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## Washington State: DoR Releases Excise Tax Advisory on NFTs

The Washington Department of Revenue released a new [Excise Tax Advisory](#) providing guidance on the application of sales and use tax and business and occupation (B&O) tax to transactions involving non-fungible tokens (NFTs). The Advisory updates and replaces an interim statement on NFTs released in July 2022.

The Department generally explains that NFTs typically grant ownership of, or a right to, something of value. To assess the tax treatment of an NFT transaction, according to the Department, taxpayers should consider (1) the nature of the underlying product, (2) whether the transaction involves only one product or more than one product, (3) the tax treatment of the underlying product, and (4) the identity of the parties to the transaction. If an NFT represents only one product, the sales tax and B&O tax treatment is determined by the nature of the underlying product. If the NFT represents two or more distinct and identifiable products for one nonitemized price, the transaction is a bundled transaction, and Washington's bundled transaction rules apply. In Washington, the general rule for bundled transactions is that the entire bundled transaction is subject to retail sales tax and retailing B&O tax if any component of the transaction is subject to tax. There is an exception for certain transactions involving the sale of digital codes that may be used to acquire one or more digital products or services; in such cases, the taxability and B&O classification can be disaggregated if the seller has adequate books and records to substantiate the separate treatment.

The Department also addresses NFT marketplaces and explains that persons operating such marketplaces generally meet Washington's definition of a "marketplace facilitator." Marketplace facilitators are required to register and report their gross income from NFT sales made on behalf of marketplace sellers under the retailing B&O tax classification but are also eligible to claim a deduction. Marketplace facilitators are also required to collect and remit sales tax on retail sales sourced to Washington and must provide their NFT marketplace sellers with access to a written report showing the marketplace sellers' monthly gross Washington sales. Marketplace sellers do not need to collect retail sales tax on NFTs when marketplace facilitators collect the tax, but the sellers must report their gross revenue from sales of NFTs under the retailing B&O tax classification.

The Advisory provides detailed examples on various tax issues as applied to NFTs, including determining the selling price of an NFT, sourcing an NFT, application of use tax to NFTs, bundled transactions, and purchase of NFTs under a resale exemption. It also addresses other miscellaneous NFT-related activities, including royalties, minting, and the burning of NFTs. For questions regarding [Excise Tax Advisory 3241](#), please contact [Michele Baisler](#).

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