

Gross Receipts:

Washington: Merchants Owe Taxes on Online Marketplace Transactions Fulfilled Using Third-Party's Service Program

Case No. 39321-6-III, Wash. Ct. App. (1/23/24). In an unpublished opinion involving the nonpayment of Washington sales taxes for the sales of goods in Washington and from the nonpayment of state business and occupation (B&O) taxes on income generated from the in-state storage of goods by two out-of-state merchants selling their products using an online marketplace and the marketplace affiliate's fulfillment service program for the pre-*Wayfair* tax periods at issue, a Washington Court of Appeals (Court) affirmed that the merchants effectively sold goods stored in the third-party's in-state warehouses to Washington customers and thus were responsible for both Washington sales and B&O tax on the transactions. In doing so, the Court rejected the merchants' claims that the online marketplace, as the "consignee," sold the goods in retail to the consumers and therefore the merchants may avoid any underlying Washington tax liability. The Court explained that the merchants failed to show that the agreements they had with the marketplace facilitator constituted a consignment agreement; rather, according to the Court, the purpose of the contracts was to facilitate the merchants' ability to sell their own goods through the online marketplace's website. Under the facts, the merchants contended that they did not know what the language in the respective contracts meant and were under the impression that the online marketplace would collect and remit any Washington taxes due on the in-state transactions. Please contact us with any questions.

URL: https://www.courts.wa.gov/opinions/pdf/393216_unp.pdf

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