

Gross Receipts:

Washington: Gross Proceeds Received by Online Auctioneer of Digital Advertising Space are Fully Taxable

Determination No. 22-0027, Wash. Dept. of Rev. (9/9/24). A ruling issued by the Administrative Review and Hearings Division of the Washington Department of Revenue (Division) held that a company:

URL: <https://dor.wa.gov/sites/default/files/2024-09/43WTD069.pdf>

1. Using proprietary software to provide online sellers of advertising space a market for the space to advertisers must report the income it receives from advertisers as gross proceeds subject to Washington's business and occupation (B&O) tax, and
2. Providing a digital platform to sell advertising space is not a "marketplace facilitator" under the plain language of Washington's applicable statute, and thus it is not only subject to B&O tax on the income it classified as commissions.

The Division also held that the company's payments for advertising space cannot be deducted from its B&O tax gross proceeds of sales as an advancement or reimbursement because there was no agency relationship between the applicable parties. Under the facts, the company described itself as an "advertising exchange" that uses software to auction the advertising space of third-party publishers, usually mobile-app developers and websites, to advertisers and businesses – enabling real-time bidding by advertisers and businesses on the advertising space of the third-party publishers. The Division reasoned that, under these facts, the company essentially operated like an advertising agency and provided taxable "advertising services." The Division also reasoned that the facts showed the company had assumed liability for its payments to the third-party publishers and that nothing indicated that it was an "agent." In fact, according to the Division, the company's contracts with the third-party publishers indicated that the compensation to the publishers was determined at the company's sole discretion. Please contact us with any questions.

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