

WHO COLLECTS THE TAB?

SALES TAX IN FOOD DELIVERY APPS



Who Collects the Tab? Sales Tax in Food Delivery Apps

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In this article, the authors explore the sales tax implications of food delivery services and steps companies should take to stay compliant across the various states where they do business.

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Ordering a meal through a mobile app has become routine for millions of consumers. Behind what appears to be a simple transaction, however, is a complex tax structure involving restaurants, digital platforms, delivery drivers, and multiple layers of state tax rules. A single online food order can include the cost of the meal, platform service fees, delivery charges, tips, and sales tax — all processed through a third-party marketplace.

To address the rapid growth of digital marketplaces, most states have adopted marketplace facilitator laws that shift the responsibility for collecting and remitting sales tax from individual sellers to the platform facilitating the transaction. While those laws were intended to simplify compliance, they have introduced new challenges for restaurants and retailers that rely on third-party delivery services.

To be compliant, businesses must determine who is responsible for collecting tax, how marketplace transactions should be reported, and whether delivery or service fees are taxable. Emerging policies such as retail delivery fees add another compliance layer. In some cases, these complexities create opportunities for sales

tax refunds when marketplace transactions are mistakenly reported and sales tax is paid twice: once by the consumer and once by the seller.

What Is a Marketplace Facilitator?

A marketplace facilitator is generally defined as a business that contracts with third-party sellers to facilitate retail sales through a digital platform and plays a role in transactions between buyers and sellers.¹

Although definitions vary by state, most marketplace facilitator statutes include two core elements: (1) the marketplace facilitator operates or controls the platform or marketplace that is providing the listing or advertising or otherwise making products or services available for sale on behalf of sellers; and (2) the platform directly or indirectly participates in the transaction, such as by processing payments, transmitting orders, or providing fulfillment services. Payment processing is not always required for marketplace facilitator classification, and some states' laws encompass a broad range of direct or indirect involvement in a transaction.

Several states provide carveouts, exclusions, or optional treatments for specific groups. Those provisions vary significantly by jurisdiction and may apply to advertising service platforms, car rental facilitators, delivery network companies, and similar businesses. Some jurisdictions might exclude those platforms from marketplace facilitator rules or subject them to different compliance obligations depending on how the statutes and administrative guidance are structured.

¹ Multistate Tax Commission Wayfair Implementation and Marketplace Facilitator Work Group, White Paper (July 8, 2021).

If a platform meets the definition of a marketplace facilitator in a given state and exceeds that state's economic nexus threshold or otherwise has nexus via physical means, it typically must collect and remit sales tax on the full sales price of transactions. That framework allows states to shift tax compliance responsibilities from thousands of individual sellers to large digital platforms.

However, tax remittance requirements vary by state and facilitator. In some cases, the facilitator remits all applicable tax; in others, it remits specified components (for example, the state portion of the sales tax) and returns others (for example, the local portion of the sales tax) to the seller or returns the entire collected amount to the seller for remittance.

Marketplace Facilitator Framework

All states that impose sales tax adopted marketplace facilitator statutes following the Supreme Court's decision in *Wayfair*.² Those laws generally require marketplace operators that facilitate transactions between sellers and customers to collect and remit sales tax on behalf of those sellers.

Under that structure, when a customer orders prepared food through a delivery application, the marketplace facilitator — rather than the restaurant — generally collects and remits the applicable sales tax. Restaurants remain responsible for the collection of tax on direct sales, such as in-store purchases or orders placed through the restaurant's website.

State Guidance on Food Delivery Platforms

Several states have issued guidance clarifying how marketplace facilitator rules apply to food delivery platforms.

Iowa explains that food delivery platforms that allow customers to order meals and process payment through an application could qualify as marketplace facilitators.³ When the platform exceeds Iowa's economic nexus threshold, it

must collect and remit Iowa sales tax and applicable local option taxes.

The Washington Department of Revenue similarly defines marketplace facilitators as businesses that list products, process payments, or transmit orders through a digital marketplace.⁴ Once nexus thresholds are met, the facilitator must collect Washington retail sales tax and might owe business and occupation tax on commissions and service fees.

The District of Columbia has issued a notice to clarify that a marketplace facilitator that processes restaurant orders and collects payment from customers must collect and remit the District's sales tax.⁵

New York and Pennsylvania have adopted similar rules requiring marketplace providers exceeding economic nexus thresholds to collect and remit tax on facilitated sales.

Mississippi guidance indicates that some delivery services that purchase food from restaurants and resell it to customers might be treated differently from traditional marketplace facilitators.⁶

In most states with marketplace facilitator rules, the platform collects and remits sales tax on the transaction's taxable components, which usually include the meal and possibly some fees.

Double Reporting and Potential Refunds

One of the most common compliance issues is duplicate reporting of marketplace transactions. That is often driven by timing differences between when food delivery platforms realized they had met the requirements to be considered marketplace facilitators in their jurisdictions and when they began collecting tax.

The effective dates of marketplace facilitator rules vary by state, and third-party delivery platforms did not start collecting or remitting any components of the sales tax simultaneously and uniformly across all states. Those food delivery platforms often implement compliance

² *South Dakota v. Wayfair Inc.*, 585 U.S. 162 (2018).

³ Iowa Department of Revenue, "Food Delivery Services as Marketplace Facilitators" (undated).

⁴ Washington DOR, "Marketplace Facilitators" (undated).

⁵ District of Columbia Office of Tax and Revenue, Notice 2020-06 (May 26, 2020).

⁶ Mississippi DOR, Notice 72-20-04 (June 25, 2020).

on a state-by-state schedule that can lag behind statutory effective dates.

That mismatch typically creates two key periods: a gap period, when the platform has not yet begun collecting tax and exposure might arise, and an overlap period, when both parties collect and remit all or portions of the sales tax, creating potential refund opportunities.

If a state's marketplace facilitator law was effective but the platform had not begun collecting tax, the restaurant might have remained responsible for collecting and remitting sales tax on those orders. If it failed to do so, it could have created exposure to penalties and interest.

In the overlap period, restaurants might not have updated their reporting processes in time to align with when a platform began collecting and remitting tax. Marketplace sales might have continued to flow through the restaurant's point of sale and been reported as taxable sales by the restaurant, even though the marketplace facilitator had already remitted the tax collected. That overlap can lead to overreported tax and potential refund claims for the restaurant.

Many delivery platforms publish state-specific compliance start dates. Those are critical to determining when responsibility shifted from the restaurant to the platform, whether a gap or overlap period exists, and the appropriate time frame for refund analysis or exposure review.

Because individual delivery platforms' start dates do not always align with statutory effective dates, a state-by-state review is often necessary. Restaurants should identify platform collection start dates by state, compare those dates with effective dates for marketplace facilitator statutes, and reconcile point-of-sale data to marketplace settlement reports across the relevant periods.

That approach can help businesses identify refund opportunities tied to duplicate reporting and assess any exposure if tax was not collected during transition periods.

Retail Delivery Fees

Some states have enacted retail delivery fees on deliveries of taxable goods, adding another level of compliance. Colorado implemented a statewide fee beginning in 2022,⁷ and Minnesota followed in 2024 for some deliveries that exceed specified thresholds.⁸ However, Minnesota exempts retail deliveries by food and beverage establishments from the fee when they make the delivery themselves or use third-party delivery services. Other states might follow that trend by enacting retail delivery fees, including exceptions for restaurant deliveries made through marketplace platforms.

While those charges can seem like sales taxes, they typically operate under separate statutory regimes, often with distinct registration, collection, and reporting requirements. As a result, identifying who is responsible for collecting and remitting the fee is especially important.

Marketplace facilitator rules are often central to that determination. When a restaurant sells meals through a third-party delivery platform, the platform is generally treated as a marketplace facilitator and is responsible for collecting and remitting applicable sales tax and, in many cases, the retail delivery fee. By contrast, when a restaurant delivers using its own employees or internal delivery infrastructure, it typically remains the retailer and must assess, collect, and remit sales tax, as well as any applicable retail delivery fee.

That creates a dual compliance model for restaurants that use both third-party platforms and in-house delivery. Each channel should be evaluated to confirm that the correct party is collecting and remitting the correct amounts. Misalignment can result in double reporting, underpayment, or missed obligations. As a result, dual-compliance models require customized frameworks and frequent updates to remain accurate and in compliance with evolving state requirements.

⁷ Colorado DOR, "About the Retail Delivery Fee" (undated).

⁸ Minnesota DOR, "Retail Delivery Fee" (undated).

Next Steps

Restaurants using third-party delivery platforms should continue to monitor legislative developments regarding fees for both marketplace facilitators and retail delivery services, reconcile marketplace delivery fee reports to internal records and reporting, and review prior filings for potential refund opportunities or exposure.

Existing marketplace facilitators need to track updates to state laws that could affect their tax rates and responsibilities, including the potential collection of various fees.

New facilitators entering the restaurant space should evaluate the interplay of collection obligations and state and local sourcing rules and confirm that their technology can accurately apply and document the correct tax and fee treatment across jurisdictions. ■

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