

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

state the tax due on meals.

Gail Cole • Apr. 10, 2022

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

\$9.99/month

- ✓ Enjoy unlimited free delivery
- ✓ Donate your change and we'll match it
- ✓ Get access to exclusive member perks

[Join now](#)



Perks

Redeem

Earn



Cash value

\$231⁰⁰



**4 for \$4 Meal
Deals at Wendy's**

**Featured
Perk**



**Free Delivery at
Bareburger**

**Free
delivery**

Getting takeout used to entail phoning a restaurant or placing an order in person.

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

There are pros and cons for restaurants. On the positive side, delivery apps may help restaurants advertise and expand their customer base. Yet restaurants pay a premium for the services provided; commissions tend to run 15% to 30%. According to [McKinsey & Company](#), “a typical restaurant would have to increase its total sales significantly to stay at the same profit margin it enjoyed without delivery.” Meanwhile, the delivery platforms themselves are “struggling to make a profit.”

The restaurant–mobile app relationship can also complicate tax compliance.

When restaurants handle their own to-go sales, they're in charge of collecting payment and collecting, remitting, and reporting applicable taxes. When a third party gets involved, who's responsible for the tax isn't necessarily clear. Another question that frequently arises is whether the fees a delivery app charges to a restaurant are subject to sales tax.

Taxability rules vary by state, as always with sales tax, but some state laws don't yet specify the taxability of mobile delivery app fees. The more taxpayers seek to understand their responsibilities, the more states are being forced to weigh in on this issue. One of the latest states to do so is Texas, in a [letter ruling](#) requested by a mobile ordering and payment platform provider.

Texas rules on taxability of mobile delivery app fees

As explained by the Texas Comptroller, the mobile delivery application accepts orders from customers on behalf of restaurants, collects payments from customers on behalf of restaurants, collects applicable taxes from customers, remits payments (minus fees) to restaurants on a weekly basis, and uses a third party to process payments. It also charges restaurants the following fees:

- Setup fee to cover initial installation and configuration

- Service fee (percentage of weekly gross sales)

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

each fee is an exempt charge for a nontaxable service or a taxable charge for a taxable data processing service.

Per [Section 151.0035](#), data processing services include “word processing, data entry, data retrieval, data search, information compilation, payroll and business accounting data production, and other computerized data and information storage or manipulation.” [Rule 3.330\(a\)\(1\)](#) further defines data processing services as “the processing of information for the purpose of compiling and producing records of transactions, maintaining information, and entering and retrieving information.”

The Comptroller ruled as follows:

- The setup fee is a taxable data processing service charge.
- The service fee is a taxable charge for a data processing service, but unlike the other fees charged by the mobile app, the service fee qualifies for a 20% exemption for information services and data processing services under Section 151.351. The mobile app is therefore responsible for collecting and remitting sales and use tax on 80% of the service fee charged to restaurants.
- The credit card fee is a taxable data processing service charge. Although the “settling of an electronic payment transaction by a licensed money transmitter” is excluded from the definition of data processing (Senate Bill 153, 2021), the “settling of an electronic payment transaction” doesn’t include charges by a marketplace provider — and the mobile delivery app is a marketplace provider. Consequently, the mobile delivery app’s credit card fees are a taxable charge for data processing services. See [Section 151.007\(a\)\(2\)](#); [Rule 3.330\(d\)\(3\)](#).
- The optional offers fee is a nontaxable service charge. It’s akin to an advertising service, and advertising services generally aren’t taxable in Texas. Furthermore, the rewards points provided by the mobile app are equivalent to gift certificates, and sales of gift cards or gift certificates aren’t taxable.

- The optional “earn plus” fee is a charge for a nontaxable service.

Hello. It looks like you’re using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

facts and make complex laws and regulation more digestible for accounting and business professionals.

Sales Tax • Small Business

CPA Practice Advisor is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors.

© 2024 Firmworks, LLC. All rights reserved