

Senate Bill 224
Testimony of Raj Lapsiwala

House Ways and Means Committee

May 7, 2024

Chairman Blessing and Members of the Senate Ways and Means Committee, my name is Raj Lapsiwala and I am a Senior Tax Manager for Instacart. I am here today to testify in support of Senate Bill 224 that would create a waiver for delivery network companies from the marketplace facilitator law.

Instacart Platform

Instacart is the leading grocery technology company in North America, we work with grocers and retailers to transform how people shop. In Ohio, we partner with over 70 retailers across more than 3,400 stores, helping them grow their businesses and support their local communities. On the Instacart platform, a consumer can shop for goods from a local retailer. After selecting goods, the consumer will checkout and pay for the goods, including applicable service or delivery fees, and applicable tax. An independent contractor, what we call a Shopper, will then pick, pack, and pay for the goods at the retailer's physical storefront.

Under Ohio's current law, Instacart is a marketplace facilitator. When we partner with larger retail stores, this is not an issue – Instacart as the marketplace facilitator collects and remits the sales tax on taxable goods to the State of Ohio and our local retail partners suppress their collection of the sales tax. But because most small businesses are not able to implement a technological solution to suppress tax at the point-of-sale system for marketplace facilitated sales, the Shopper is required to pay tax again on the purchase of goods at the retailer's brick-and-mortar location. When the Shopper has to pay tax at the retailer's point-of-sale system, the tax is paid by the marketplace facilitator resulting in double taxation.

This means, the consumer is charged tax only once. The marketplace facilitator remits the tax collected from the consumer to the Department of Taxation and the retailer in turn remits the tax collected from the marketplace facilitator to the Department of Taxation. See example in Appendix A.

Challenges Faced by Retailers

Many retailers that were already collecting and remitting taxes have faced large operational and technological challenges in shifting the tax remittance to a marketplace facilitator. Implementing or upgrading systems to account for significantly increased compliance obligations has been both costly and a lengthy process for retailers, and unfeasible for small businesses.

Instacart facilitates online orders for brick-and-mortar retailers, many of which are small businesses who are unable to build their own websites, and who have a long-established history of

sales and use tax compliance in Ohio. As these small businesses have limited resources with respect to tax departments or engineering teams, they have been unable to suppress tax in the store's point-of-sale system. Approximately half of the retailers operating on the Instacart platform in Ohio have been unable to suppress tax due to technological challenges. If the provisions in Senate Bill 224 are enacted, those small businesses will see no change in their operations and in fact, because marketplace facilitators will no longer be taxed for simply working with these businesses, we are much more likely to continue these partnerships that many small businesses have to come to see as a vital part of their business.

Tax Administration

Requiring marketplace facilitators to remit tax in all circumstances does not result in equitable and efficient tax administration. A retailer with a valid vendor's license with the Department of Taxation should be allowed to continue to remit taxes because there is no net new revenue for the state (e.g., shifting the compliance obligation from compliant taxpayers to another doesn't result in increased compliance or additional revenue for the state). Unlike in the traditional marketplace facilitator scenario, retailers operating on the Instacart platform have long been registered and remitting sales taxes as they are physically located in the state. Many of these retailers also have established audit histories with the Ohio Department of Taxation.

Increased Costs

The impact of increased tax compliance, and the effect of double tax, is ultimately borne by consumers in the form of increased prices of goods and service fees. Increased costs may deter some customers from shopping on marketplaces and may result in reduced sales for small businesses.

Taxation of Fees Charged to Consumers

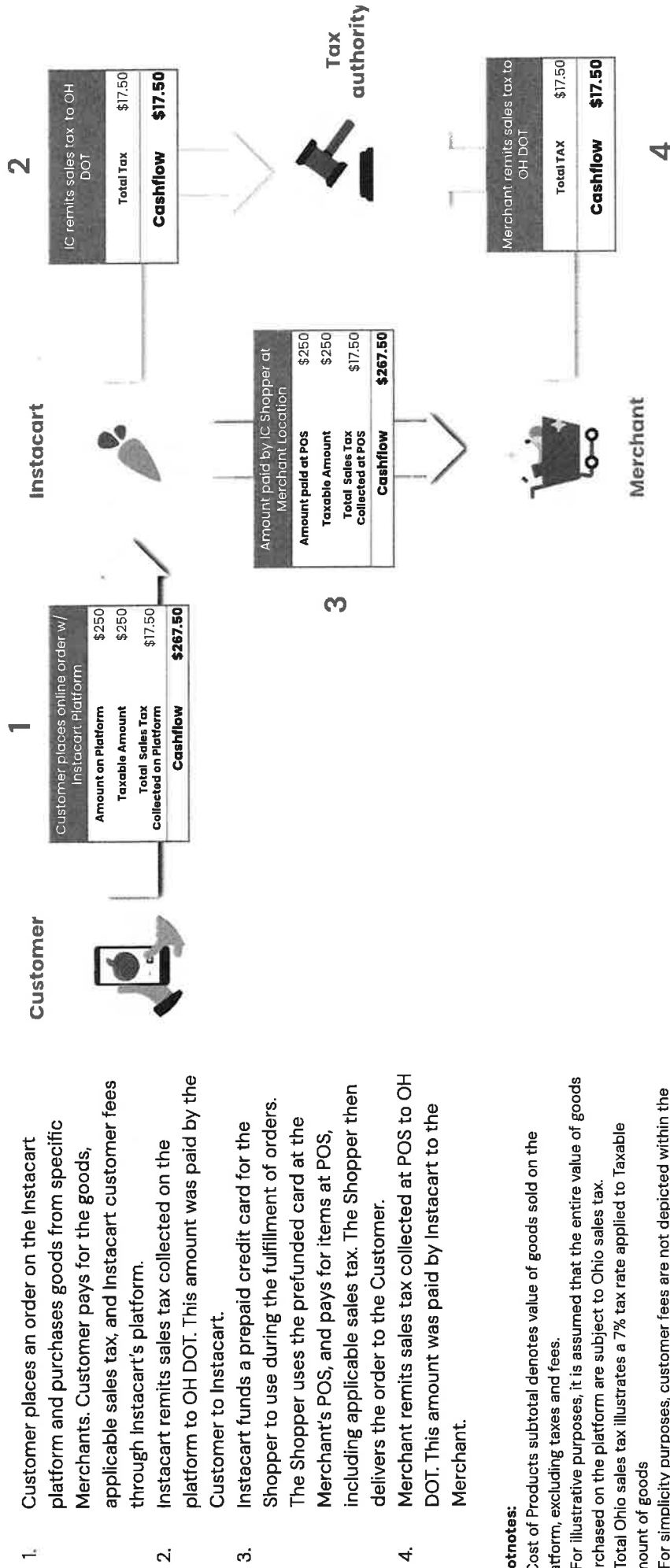
Delivery and service fees would continue to be taxable. Sec. 5741.072(A)(3) of H.B. 424 explicitly states that "A waiver granted under this section does not affect the delivery network company's status as the seller of its delivery network services." Meaning, that a delivery network company is still treated as a seller of delivery network services, and thus required to collect and remit taxes on the fees charged by a delivery network company for delivery network services.

Collaboration with Ohio Department of Taxation

Instacart appreciates the opportunity to work and collaborate with the Ohio Department of Taxation on this bill that would result in fair and efficient tax administration.

Thank you again for the opportunity to appear before you today and I would be happy to answer any questions at this time.

Example of Double Tax



1. Customer places an order on the Instacart platform and purchases goods from specific Merchants. Customer pays for the goods, applicable sales tax, and Instacart customer fees through Instacart's platform.
2. Instacart remits sales tax collected on the platform to OH DOT. This amount was paid by the Customer to Instacart.
3. Instacart funds a prepaid credit card for the Shopper to use during the fulfillment of orders. The Shopper uses the prefunded card at the Merchant's POS, and pays for items at POS, including applicable sales tax. The Shopper then delivers the order to the Customer.
4. Merchant remits sales tax collected at POS to OH DOT. This amount was paid by Instacart to the Merchant.

Footnotes:

1. Cost of Products subtotal denotes value of goods sold on the platform, excluding taxes and fees.
2. For illustrative purposes, it is assumed that the entire value of goods purchased on the platform are subject to Ohio sales tax.
3. Total Ohio sales tax illustrates a 7% tax rate applied to Taxable Amount of goods
4. For simplicity purposes, customer fees are not depicted within the illustration.
5. The amount of tax collected at POS (paid by the IC shopper) does not impact the customer.