Registered Out-of-state Businesses Currently not Reporting Income from Service Activities – New Apportionment for Certain Income

Background


As an out-of-state business registered with the Department of Revenue, you may have only reported wholesale and retail sales to Washington in the past. Under the new law you may need to report other apportionable income if you meet the new nexus thresholds (see below).

Please forward this information to any of your affiliates that also may be affected by this new legislation.

Economic nexus taxable thresholds

Under the new law, a business has substantial nexus with Washington State if in a tax year it has at least one of the following in Washington State:

- It is commercially domiciled in Washington;
- Property with an average value exceeding $50,000,
- Payroll exceeding $50,000 (including certain third-party costs),
- Receipts exceeding $250,000, or
- At least 25% of its worldwide property, payroll, or gross receipts.

Note: For purposes of calculating the property, payroll, and sales thresholds for the 2010 tax year, the entire 2010 calendar year is to be used. Starting June 1, 2010, a business will incur B&O tax only if it establishes substantial nexus with Washington under 2ESSB 6143. For example, Taxpayer X is an out-of-state business with no physical presence in Washington. In 2010, Taxpayer X has $100,000 of Washington receipts in February, $100,000 in June, and $100,000 in July. Taxpayer X establishes nexus with Washington under 2ESSB 6143 in July for 2010 and will owe B&O tax only on income earned on or after June 1, 2010.
The new law provides for a single-factor apportionment methodology based on receipts. Income is apportioned to Washington by multiplying a business’s “apportionable income” by the receipts factor. The numerator of the receipts factor is the business’s gross annual apportionable income attributable to Washington State. The denominator is the business’s apportionable income received worldwide.

The legislation provides a detailed hierarchy of rules to determine whether gross income is attributable to Washington or another state. For financial institutions, the Department is required to adopt the new single-factor apportionment methodology by rule. This new apportionment method applies to income earned on and after June 1, 2010.

The new apportionment calculation must be used for income reported under the following B&O tax classifications:

- Service and other activities
- Royalties
- Travel agents and tour operators
- International steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent
- Stevedoring and associated activities
- Disposing of low-level waste
- Title insurance producers, title insurance agents, or surplus line brokers
- Public or nonprofit hospitals
- Real estate brokers
- Research and development performed by nonprofit corporations or associations
- Inspecting, testing, labeling, and storing canned salmon owned by another person
- Representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of chapter 48.17 RCW
- Contests of chance
- Horse races
- Licensed boarding homes
- Aerospace product development
- International investment management
- Printing or publishing a newspaper, but only with respect to advertising income
- Printing materials other than newspapers, and of publishing periodicals or magazines, but only with respect to advertising income
- Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development, but only with respect to activities that would be taxable as an “apportionable activity” if this special tax classification did not exist

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Taxpayers reporting under more than one of the above tax classifications must calculate a separate receipts factor for each tax classification.

On June 1, 2010, the Department will adopt four emergency rules to help taxpayers understand the changes in the law. The rules are:

- WAC 458-20-19401 (Minimum Nexus Standards for Apportionable Activities);
- WAC 458-20-19402 (Single Factor Receipts Apportionment – Generally);
- WAC 458-20-19403 (Single Factor Receipts Apportionment – Royalties); and
- WAC 458-20-19404 (Single Factor Receipts Apportionment – Financial institutions).

In addition to adopting the above administrative rules, the Department is also amending two rules that are no longer applicable for tax liability after May 31, 2010. Those rules are:

- WAC 458-20-14601 (Financial institutions – Income apportionment); and
- WAC 458-20-194 (Doing business inside and outside the state).

The new apportionment method will be more fully described in upcoming Department rules, and other publications. These documents will be available on our website at: dor.wa.gov/EconomicNexus. To receive updated information, we advise you to join our listserv by visiting the Economic Nexus website, clicking on the Listserv link under “How can I get more information?,” and click on, “Join or Leave DOR-ECONOMIC-NEXUS.”

For immediate questions, send an email to communications@dor.wa.gov or contact the Department’s Telephone Information Center at 1-800-647-7706.