



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Revenue

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) **(If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)**

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: To recognize provisions of Part II, ESSB 6138 (Chapter 5, Laws of 2015), which provides, in relevant part, that substantial nexus for wholesaling activities is deemed established by exceeding certain economic nexus thresholds rather than by a physical presence in Washington. In addition, the legislation amends the economic nexus thresholds, which now measure a person's property, payroll, and receipts from the immediately preceding year in evaluating whether a person has substantial nexus in the current year.

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 458-20-19401 Minimum nexus thresholds for apportionable activities.

Suspended:

Statutory authority for adoption: RCW 82.32.300 and 82.01.060(2)

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR **16-08-103** on **April 05, 2016**.

Describe any changes other than editing from proposed to adopted version: None.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: phone ()

Address: fax ()

e-mail

Date adopted:

June 7, 2016

NAME

Kevin Dixon

SIGNATURE

TITLE

Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 07, 2016

TIME: 2:44 PM

WSR 16-13-040

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	Amended		Repealed
Federal rules or standards:	New	Amended		Repealed
Recently enacted state statutes:	New	Amended	1	Repealed

The number of sections adopted at the request of a nongovernmental entity:

	New	Amended		Repealed
--	-----	---------	--	----------

The number of sections adopted in the agency's own initiative:

	New	Amended		Repealed
--	-----	---------	--	----------

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	Amended		Repealed
--	-----	---------	--	----------

The number of sections adopted using:

Negotiated rule making:	New	Amended		Repealed
Pilot rule making:	New	Amended		Repealed
Other alternative rule making:	New	Amended		Repealed

AMENDATORY SECTION (Amending WSR 15-04-004, filed 1/22/15, effective 2/22/15)

WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. (1) Introduction.

~~(a) ((This rule only applies to periods after May 31, 2010.~~

~~(b)) The state of Washington imposes business and occupation (B&O) tax on ((apportionable activities measured by the gross income of the business. B&O tax may only be imposed if a person has a)) persons that have "substantial nexus" with this state. For ((the purposes of)) apportionable activities and for wholesaling activities taxable under RCW 82.04.257(1) or 82.04.270, substantial nexus does not require a ((person to have)) physical presence in this state, as that phrase is described in RCW 82.04.067(6).~~

~~((c) The following rules may also be helpful:~~

~~(i)) (b) This rule only applies to periods after May 31, 2010. In 2015, Washington changed the thresholds for substantial nexus described in subsection (3)(a)(iii) of this rule; it also expanded the scope of these tests to apply to wholesaling activity. Effective September 1, 2015, the thresholds are measured based on a person's payroll, property, and receipts in the immediately preceding calendar year. For periods from June 1, 2010, to August 31, 2015, the thresholds did not apply to wholesaling activity and were based on the person's payroll, property, and receipts in the current calendar year. See subsection (10) of this rule for additional information.~~

~~(c) **Other rules that may apply.** Readers may also want to refer to other rules for additional information, including those in the following list:~~

~~(i) WAC 458-20-193 Interstate sales of tangible personal property. This rule describes the taxation of interstate sales of tangible personal property.~~

~~(ii) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006, through May 31, 2010.~~

~~(iii) WAC 458-20-19402((τ)) Single factor receipts apportionment—Generally. This rule describes the general application of single factor receipts apportionment and applies only to tax liability incurred after May 31, 2010.~~

~~((ii)) (iv) WAC 458-20-19403((τ, Single factor receipts apportionment—Royalties)) Apportionable royalty receipts attribution. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.~~

~~((iii)) (v) WAC 458-20-19404((τ)) Financial institutions—Income apportionment. This rule describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred after ((May 31, 2010.~~

~~(iv) WAC 458-20-193, Inbound and outbound interstate sales of tangible personal property.~~

~~(v) WAC 458-20-194, Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006 through May 31, 2010)) December 31, 2015.~~

(vi) WAC 458-20-19404A Financial institutions—Income apportionment. This rule describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred between June 30, 2010, and December 31, 2015.

(d) Examples included in this rule identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances. For the examples in this rule, gross income received by the taxpayer is from engaging in apportionable activities or from making wholesale sales. Also, unless otherwise stated, the years in the examples are time periods that occur after August 31, 2015; the examples do not apply to tax liability prior to June 1, 2010.

The minimum nexus thresholds described in this rule and used in examples are ~~((subject to change because of))~~ not adjusted for consumer price index changes. ((Refer to ETA 3195.2015 "Economic Nexus Minimum Thresholds" for the current threshold amounts.))

(2) **Definitions.** Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this rule.

(a) **"Apportionable activities"** includes only those activities subject to B&O tax under the following classifications:

- (i) Service and other activities;
- (ii) Royalties;
- (iii) Travel agents and tour operators;
- (iv) 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;
- (v) Stevedoring and associated activities;
- (vi) Disposing of low-level waste;
- (vii) Title insurance producers, title insurance agents, or surplus line brokers;
- (viii) Public or nonprofit hospitals;
- (ix) Real estate brokers;
- (x) Research and development performed by nonprofit corporations or associations;
- (xi) Inspecting, testing, labeling, and storing canned salmon owned by another person;
- (xii) 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;
- (xiii) Contests of chance;
- (xiv) Horse races;
- (xv) International investment management services;
- (xvi) Room and domiciliary care to residents of a boarding home;
- (xvii) Aerospace product development;
- (xviii) Printing or publishing a newspaper (but only with respect to advertising income);
- (xix) Printing materials other than newspapers and publishing periodicals or magazines (but only with respect to advertising income); and
- (xx) 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" under any of the tax classifications listed in (a)(i) through

(xix) of this subsection if this special tax classification did not exist.

(b) **"Credit card"** means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(c) **"Gross income of the business"** means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. The term gross receipts means gross income from apportionable activities.

(d) **"Loan"** means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loan includes participations, syndications, and leases treated as loans for federal income tax purposes. Loan does not include: Futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit (REMIC) or other mortgage-backed or asset-backed security; and other similar items.

(e) **"Net annual rental rate"** means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(f) The terms **"nexus"** and **"substantial nexus"** are used interchangeably in this rule.

(g) **"Property"** means tangible, intangible, and real property owned or rented and used in this state during the calendar year, except property does not include ownership of or rights in computer software, including computer software used in providing a digital automated service; master copies of software; and digital goods or digital codes residing on servers located in this state. Refer to RCW 82.04.192 and 82.04.215 for definitions of the terms computer software, digital automated services, digital goods, digital codes, and master copies.

(h) **"Securities"** includes any intangible property defined as a security under section 2 (a)(1) of the Securities Act of 1933 including, but not limited to, negotiable certificates of deposit and municipal bonds.

(i) **"State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

~~((i) **"Securities"** includes any intangible property defined as a security under section 2 (a)(1) of the Securities Act of 1933 including, but not limited to, negotiable certificates of deposit and municipal bonds.))~~ (j) **"Wholesale sales"** means wholesale sales taxable under RCW 82.04.257(1) or 82.04.270 and **"wholesaling"** means the activity of making such sales. For substantial nexus standards applicable to

wholesale sales taxable under another classification, see WAC 458-20-193.

(3) **Substantial nexus.**

(a) Substantial nexus exists where a person is:

(i) An individual and is a resident or domiciliary of this state during the calendar year;

(ii) A business entity and is organized or commercially domiciled in this state during the calendar year; or

(iii) A nonresident individual or a business entity that is organized ~~((or))~~ and commercially domiciled outside this state, and in ~~((any))~~ the immediately preceding calendar year the person ~~((has))~~ had:

(A) More than fifty thousand dollars of property in this state;

(B) More than fifty thousand dollars of payroll in this state;

(C) More than two hundred fifty thousand dollars of receipts from this state from apportionable activities, from wholesaling activities, or from a combination of both; or

(D) At least twenty-five percent of the person's total property, total payroll, or total receipts in this state.

Example 1. ~~((Company commercially domiciled in Washington.))~~ Company C is commercially domiciled in Washington and has one employee in Washington who earns \$30,000 per year. Company C has substantial nexus with Washington because it is commercially domiciled in Washington. The minimum nexus thresholds for property, payroll, and receipts do not apply to a business entity commercially domiciled in this state.

(b) The department will adjust the amounts listed in (a) of this subsection based on changes in the consumer price index as required by RCW 82.04.067. ~~((See ETA 3195.2015))~~ These adjustments are published in ETA 3195 "Economic Nexus Minimum Thresholds." ~~((for the current threshold amounts.))~~

(c) The minimum nexus thresholds are applied on a tax year basis. Generally, a tax year is the same as a calendar year. See RCW 82.32.270. For the purposes of this rule, tax years will be referred to as calendar years. ~~((This means that if a person meets the minimum nexus thresholds in a calendar year, that person is subject to B&O taxes for the entire calendar year.))~~

Example 2. Company Q is organized and domiciled outside of Washington. Company Q maintains an office in Washington which ~~((houses))~~ housed a single employee~~((-))~~ in the immediately preceding calendar year. In the immediately preceding calendar year, Company Q ~~((has))~~ had \$40,000 in property located in Washington, paid \$45,000 in compensation to the Washington employee ~~((receives \$45,000 in compensation)),~~ and ~~((has))~~ had \$200,000 in apportionable receipts attributed to Washington~~((-))~~ and \$0 wholesaling receipts sourced to Washington. In the immediately preceding calendar year, Company Q's total property ~~((is))~~ everywhere was valued at \$200,000, total payroll ~~((compensation is))~~ was \$400,000, and total apportionable and wholesaling receipts ~~((is))~~ were \$5,000,000. Although Company Q has physical presence in Washington, as described in RCW 82.04.067(6), it ~~((does not have))~~ is not treated as having substantial nexus with Washington with respect to its apportionable and wholesaling activities because~~((+))~~ (a) it is not organized or domiciled in Washington~~((+))~~ and (b) ~~((does))~~ it did not have sufficient property, payroll, or receipts in the immediately preceding calendar year to ~~((meet))~~ exceed the minimum nexus thresholds identified in subsection ~~((+2+))~~ (3)(a)(iii) of this rule.

(4) **Property threshold.**

(a) **Location of property.**

(i) Real property - Real property owned or rented is in this state if the real property is located in this state.

(ii) Tangible personal property - Tangible personal property is in this state if it is physically located in this state.

(iii) Intangible property - Intangible property is in this state based on the following:

A loan is located in this state if:

(A) More than fifty percent of the fair market value of the real and/or personal property securing the loan is in this state. An automobile loan is in this state if the vehicle is properly registered in this state. Other than for property that is subject to registered ownership, the determination of whether the real or personal property securing a loan is in this state must be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral must be disregarded; or

(B) If (a)(iii)(A) of this subsection does not apply and the borrower is located in this state.

(iv) A borrower is located in this state if:

(A) The borrower is engaged in business and the borrower's commercial domicile is located in this state; or

(B) The borrower is not engaged in business and the borrower's billing address is located in this state.

(v) A credit card receivable is in this state if the billing address of the card holder is located in this state.

(vi) A nonnegotiable certificate of deposit is property in this state if the issuing bank is in this state.

(vii) Securities:

(A) A negotiable certificate of deposit is property in this state if the owner is located in this state.

(B) A municipal bond is property in this state if the owner is located in this state.

(b) **Value of property.**

(i) Property the taxpayer owns and uses in this state, other than loans and credit card receivables, is valued at its original cost basis.

Example 3. In January (~~(2008)~~) 2013, ABC Corp. bought Machinery for \$65,000 for use in State X. On January 1, (~~(2011)~~) 2016, ABC Corp. brought that Machinery into Washington for the remainder of the year. ABC Corp. has nexus with Washington beginning in 2017 based on Machinery's original cost basis value of \$65,000. The value is \$65,000 even though the property has depreciated prior to entering the state.

(ii) Property the taxpayer rents and uses in this state is valued at eight times the net annual rental rate.

Example 4. In the preceding calendar year, out-of-state Business X (~~(rents)~~) rented office space in Washington for \$6,000 (~~(per year)~~) and (~~(has \$5,000)~~) had \$7,000 of office furniture and equipment in Washington. Business X has nexus with Washington in the current calendar year because the value of the rented office space (\$6,000 multiplied by eight, which is \$48,000) plus the value of office furniture and equipment exceeds the \$50,000 property threshold.

(iii) Loans and credit card receivables owned by the taxpayer are valued at their outstanding principal balance, without regard to any reserve for bad debts. However, if a loan or credit card receivable is actually charged off as a bad debt in whole or in part for federal income tax purposes (see 26 U.S.C. 166), the portion of the loan or credit card receivable charged off is deducted from the outstanding principal balance.

(c) **Calculating property value.** To determine whether the \$50,000 property threshold has been met, average the value of property in this state on the first and last day of the calendar year. The department may require the averaging of monthly values during the calendar year if reasonably required to properly reflect the average value of the taxpayer's property in this state throughout the taxable period.

Example 5. Company Y has property in Washington valued at \$90,000 on January 1st and \$20,000 on December 31st (~~of the same year~~). The value of property in Washington is \$55,000 $((90,000 + 20,000)/2)$. Company Y has substantial nexus with Washington beginning the following calendar year because it exceeds the \$50,000 property threshold.

Example 6. Company A (~~has~~) had no property located in Washington on January 1st (~~and~~) or on December 31st (~~of a calendar year~~). However, it brought \$100,000 in property into Washington on January 15th and removed it from Washington on November 15th of that calendar year. In this situation, the department may compute the value of Company A's property ((on a monthly basis in this situation because it is required)) over the period of time it was in the state during the calendar year in order to properly reflect ((the)) its average value ((of Company A's property in Washington)) (\$100,000 multiplied by ten (months) divided by 12 (months), which is \$83,333). Company A has substantial nexus with Washington (~~based on the value of the property averaged over the calendar year~~) beginning the following calendar year because it exceeds the \$50,000 property threshold.

Example 7. Company B (~~has~~) had no property located in Washington on January 1st (~~and~~) or on December 31st of ((a)) the immediately preceding calendar year. However, it brought \$100,000 in property into Washington on January 15th and removed it from Washington on February 15th of that calendar year. In this situation, the department may compute the value of Company A's property ((on a monthly basis in this situation because it is required)) over the period of time it was in the state during the calendar year to properly reflect ((the)) its average value ((of Company B's property in Washington)) (\$100,000 multiplied by one (month) divided by 12 (months), which is \$8,333.) Company B (~~does not have~~) is not treated as having substantial nexus with Washington based on the average value of ((the)) its property (~~averaged over~~) in Washington during the prior calendar year, unless ((this amount exceeds)) the average value exceeded 25% of Company B's total property value in the immediately preceding calendar year.

Example 8. IT Co. is commercially domiciled in State X with Employee located in Washington who works from a home office. In the immediately preceding calendar year, IT Co. provided to Employee \$5,000 of office supplies and \$15,000 of equipment owned by IT Co. IT Co. ((does not have)) is not treated as having substantial nexus with Washington based on the \$50,000 property threshold because the value of ((the)) its property in this state in the immediately preceding calendar year (\$20,000) (~~because it does~~) did not exceed \$50,000 (~~unless this amount exceeds~~). IT Co. may still be treated as having substantial nexus with this state if the value of the property in this state in the immediately preceding calendar year (\$20,000) exceeded 25% of IT Co.'s total property value in the immediately preceding calendar year. This example does not address the payroll threshold.

(5) **Payroll threshold.** "Payroll" is the total compensation defined as gross income under 26 U.S.C. Sec. 61 (section 61 of the Internal Revenue Code of 1986), as of June 1, 2010, paid during the calendar year to employees and to third-party representatives who repre-

sent the taxpayer in interactions with the taxpayer's clients and includes sales commissions.

(a) Payroll compensation is received in this state if it is properly reportable in this state for unemployment compensation tax purposes, regardless of whether it was actually reported to this state.

Example 9. Company D is commercially domiciled in State X and has a single Employee whose ~~((payroll))~~ pay of \$80,000 ~~((is))~~ during the immediately preceding calendar year was properly reportable in Washington for unemployment compensation purposes. Company D has substantial nexus with Washington during the current calendar year ~~((based on))~~ because the compensation paid to Employee during the immediately preceding calendar year exceeds the \$50,000 payroll threshold.

Example 10. Assume the same facts as Example 9 except only 50% of Employee's ~~((payroll is))~~ pay for the immediately preceding calendar year was properly reportable in Washington for unemployment compensation purposes ~~((for the calendar year))~~. Employee's Washington compensation of \$40,000 does not ~~((meet))~~ exceed the \$50,000 payroll threshold to establish substantial nexus with Washington during the current calendar year, unless this amount exceeds 25% of total payroll compensation in the immediately preceding calendar year.

(b) Third-party representatives receive payroll compensation in this state if the service(s) performed occurs entirely or primarily within this state.

(6) **Receipts threshold.** The receipts threshold is met if a ~~((taxpayer receives more than \$250,000))~~ taxpayer's receipts from apportionable and wholesaling activities ~~((that is))~~ attributed and sourced, respectively, to Washington totaled more than \$250,000 in the immediately preceding calendar year.

(a) All receipts from all apportionable and wholesaling activities are accumulated to determine if the receipts threshold is satisfied. Receipts from activities ~~((that are not subject to apportionment))~~ other than apportionable and wholesaling activities (e.g., retailing~~((, wholesaling,))~~ and extracting) are not used to determine if the receipts threshold has been satisfied.

(b) Apportionable receipts are attributed to Washington per WAC 458-20-19402 (general attribution), WAC 458-20-19403 (royalties), ~~((and))~~ WAC 458-20-19404 (financial institutions~~((+))~~, after 2015), and WAC 458-20-19404A (financial institutions, before 2016). Receipts from wholesale sales are sourced to Washington in accordance with RCW 82.32.730.

Example 11. Company E is organized and commercially domiciled in State X. In a calendar year it ~~((has \$150,000))~~ had \$100,000 in receipts from wholesale sales sourced to Washington in accordance with RCW 82.32.730, \$50,000 in royalty receipts attributed to Washington per WAC 458-20-19403, and \$150,000 in gross receipts from other apportionable activities attributed to Washington per WAC 458-20-19402. Company E has substantial nexus with Washington in the following calendar year because ~~((it has a))~~ its total of \$300,000 in receipts from apportionable activities attributed to Washington and wholesale sales sourced to Washington in a calendar year exceeded the \$250,000 receipts threshold. It does not matter that a portion of the receipts were from apportionable activities that are subject to tax under different B&O tax classifications or that the receipts from apportionable activities or wholesaling activities did not separately exceed the receipts threshold. The receipts threshold is determined by the totality of the taxpayer's apportionable and wholesaling activities in Washington.

~~((**Example 12.** Calculation of minimum nexus thresholds during the 2010 transition year. Company F receives \$200,000 in gross receipts attributed to Washington on March 15, 2010; \$100,000 on July 12, 2010; and \$100,000 on November 1, 2010. Company F has substantial nexus with Washington for the period June 1, 2010, through December 31, 2010, because it received \$400,000 in gross receipts during 2010.))~~

(7) **Application of 25% threshold.** If, in the immediately preceding year, at least twenty-five percent of an out-of-state taxpayer's property, payroll, or receipts from apportionable and wholesaling activities ((is in)) consisted of Washington property, Washington payroll, or Washington receipts, then the taxpayer has substantial nexus with Washington. The twenty-five percent threshold is determined by dividing:

(a) The value of property located in Washington by the total value of taxpayer's property;

(b) Payroll located in Washington by taxpayer's total payroll; or

(c) Apportionable and wholesaling receipts attributed and sourced to Washington by total apportionable and wholesaling receipts.

~~**Example ((13)) 12.** Company G is organized and commercially domiciled in State X. In ((a)) the immediately preceding calendar year it ((has)) had \$45,000 in property, \$45,000 in payroll, and \$240,000 in gross receipts attributed to Washington. In that year, its total property ((is)) was valued at \$200,000; its worldwide payroll ((is)) was \$150,000; and its total gross receipts ((are)) were \$2,000,000. Company G ((has)) had twenty-two and a half percent of its property, thirty percent of its payroll, and twelve percent of its receipts attributed to Washington. Company G has substantial nexus with Washington because ((more than)) at least twenty-five percent of its payroll ((is)) in the immediately preceding year was located in Washington.~~

(8) **Application to local gross receipts business and occupations taxes.** This rule does not apply to the nexus requirements for local gross receipts business and occupation taxes.

(9) **Continuing substantial nexus.** Pursuant to RCW 82.04.220, if a person ((meets any of the minimum nexus thresholds in subsection (2) of this section)) has substantial nexus with Washington in a calendar year, because, for example, it exceeds a minimum nexus threshold in subsection (3) of this rule, the person has substantial nexus for the following calendar year and will owe B&O tax on its gross receipts attributable to Washington for that additional year.

~~((**Example 14.** Assume Corporation J earns receipts attributable to Washington that do not exceed the minimum threshold from apportionable activities in any year, and whose physical presence in Washington ends on July 20, 2008. Corporation J's B&O tax reporting obligation for any gross receipts earned in Washington ends on December 31, 2010.))~~

~~**Example 13.** Assume Corporation N, which is not commercially domiciled or organized in Washington, earns receipts attributable to Washington from January 1, 2017, through March 1, 2017. These receipts exceed the minimum nexus receipts threshold for determining substantial nexus for 2018. Assuming Corporation N's 2018 payroll, property, and receipts do not exceed any of the minimum nexus thresholds for determining substantial nexus in 2019, its B&O tax reporting obligation for any gross receipts attributable to Washington ends on December 31, 2019.~~

~~(10) **Periods from June 1, 2010, through August 31, 2015.**~~

~~(a) Apportionable activities. From June 1, 2010, through August 31, 2015, substantial nexus with Washington of a nonresident individual or a business entity organized and commercially domiciled outside this state was established with respect to that person's apportionable~~

activities in a particular calendar year by measuring the person's payroll, property, and receipts in that calendar year rather than by measuring the person's payroll, property, and receipts in the immediately preceding calendar year. Pursuant to RCW 82.04.220, once established, substantial nexus continued through the following calendar year.

Example 14. Calculation of minimum nexus thresholds during the 2010 transition year. Company F receives \$200,000 in gross receipts attributed to Washington on March 15, 2010; \$100,000 on July 12, 2010; and \$100,000 on November 1, 2010. Company F has substantial nexus with Washington for the period June 1, 2010, through December 31, 2010, because it received \$400,000 in gross receipts during 2010. Pursuant to RCW 82.04.220, its substantial nexus with Washington also continues through 2011.

Example 15. Company E is organized and commercially domiciled in State X. In 2013 it had \$275,000 in gross receipts from apportionable activities attributed to Washington per WAC 458-20-19402. Company E has substantial nexus with Washington in 2013 because its total receipts from apportionable activities attributed to Washington in that calendar year, \$275,000, exceeded the receipts threshold. Therefore, Company E is subject to B&O taxes for the entire 2013 calendar year and its substantial nexus continues through at least the 2014 calendar year.

Example ((15)) 16. Assume Corporation K earns receipts attributable to Washington from July 1, 2008 through March 1, 2010 and exceeds the minimum threshold from apportionable activities in 2010. Assuming Corporation K does not exceed any of the minimum nexus thresholds in 2011, the taxpayer's B&O tax reporting obligation for any gross receipts attributable to Washington ends on December 31, 2011.

Example ((16)) 17. Assume Corporation L exceeded Washington's minimum nexus thresholds for apportionable income from 2010 through 2012, but does not ~~((meet))~~ exceed them in 2013. Corporation L's B&O tax reporting obligation for any gross receipts earned in Washington ends on December 31, 2013.

(b) Wholesaling activity. Prior to September 1, 2015, other than as a result of continuing substantial nexus pursuant to RCW 82.04.220, a nonresident individual or a business entity organized and commercially domiciled outside of Washington was deemed to have substantial nexus with this state with respect to its wholesaling activity in a calendar year only if it had a physical presence in Washington in the calendar year. See WAC 458-20-193 regarding the continuing application of the physical presence substantial nexus standard on wholesaling activity not subject to the economic nexus thresholds discussed in this rule.