



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017) (Implements RCW 34.05.310)

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DATE: October 26, 2021

TIME: 10:49 AM

WSR 21-22-032

Agency: Department of Revenue

Subject of possible rule making:

WAC 458-20-19402, *Single factor receipts apportionment—Generally* (“Rule 19402”)

Statutes authorizing the agency to adopt rules on this subject:

RCW 82.32.300, 82.01.060(2), 82.04.067, 82.04.460, and 82.04.462.

Reasons why rules on this subject may be needed and what they might accomplish:

Since amending Rule 19402 in 2015 to recognize Sec. 305 of SSB 6333 (Ch. 97, Laws of 2014), the Department has continued to receive public comments requesting additional guidance on Part 3 – “How to Attribute Receipts.” Most comments are with regard to subsection (303)(c), on services relating to the customer’s business activities. The Department is considering updating this rule to clarify subsection (303)(c) specifically, and possibly other parts of the rule based on any comments received.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: None.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study

Other (describe) All stakeholders interested in this rule making may contact the individual listed below. The public may participate by providing written comments throughout this rule making or by giving oral testimony at the public meeting or public hearing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

Name: Patrick Murphy

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(If necessary)

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Additional comments: A draft of the rule will be posted to dor.wa.gov one month prior to the public meeting. Written comments may be submitted by mail or email and should be directed to Patrick Murphy using one of the contact methods above. Written and oral comments will be accepted at the Public Meeting.

Date: January 19, 2022 **Time:** 1:00pm

Public Meeting Location: (NOTE – this meeting location has changed to virtual-only)

~~Conference Room: 114~~

~~6400 Linderson Way SW~~

~~Tumwater, Washington 98501~~

Contact Keith Dacus at KeithD@dor.wa.gov if you are interested in attending the meeting virtually.

Date: October 26, 2021	Signature:
Name: Atif Aziz	
Title: Rules Coordinator	

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

WAC 458-20-19402 Single factor receipts apportionment—Generally.

PART 1. INTRODUCTION.

(101) **General.** RCW 82.04.462 establishes the ~~((apportionment))~~ method for ~~((businesses engaged in apportionable activities and that have nexus with Washington for))~~ determining the portion of a person's apportionable income that is derived from business activities performed within Washington and subject to business and occupation (B&O) tax ((liability incurred)) for periods after May 31, 2010. The express purpose of the ~~((change in the law was))~~ apportionment framework set out in RCW 82.04.462 is to require businesses that "((earn(ing)) earn significant income from Washington residents from providing services" to "pay their fair share of the cost of services that this state renders and the infrastructure it provides." Section 101, chapter 23, 1st special session, 2010.

(102) **Guide to this rule.**

(a) This rule is divided into six parts, as follows:

1. Introduction.
2. Overview of single factor receipts apportionment.
3. How to attribute receipts.
4. Receipts factor.
5. How to determine Washington taxable income.
6. Reporting instructions.

(b) (i) 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 relevant facts and circumstances.

(ii) The examples in this rule assume all gross income received by the taxpayer is from engaging in apportionable activities.

(iii) When an example states that a particular attribution method is a reasonable method of proportionally attributing the benefit of a service, this does not preclude the existence of other reasonable methods of proportionally attributing the benefit of a service depending on the specific facts and circumstances of a taxpayer's situation.

(103) **Scope of rule.** This rule applies to the apportionment of income from engaging in apportionable activities ~~((as defined in WAC 458-20-19401))~~, except:

(a) To the apportionment of income received by financial institutions and taxable under RCW 82.04.290 ~~((, which is governed by WAC 458-20-19404))~~; and

(b) To the attribution of royalty income from granting the right to use intangible property ~~((, which is governed by WAC 458-20-19403))~~.

(104) **Separate accounting and cost apportionment.** ~~((The apportionment method explained in this rule replaces the previously allowed separate accounting and cost apportionment methods.))~~ Separate accounting and cost apportionment methods are not authorized ~~((for periods after May 31, 2010))~~.

(105) **Other rules.** Taxpayers may also find helpful information in the following rules:

(a) WAC 458-20-19401 ~~((Minimum))~~ **Substantial nexus** ~~((thresholds for apportionable activities))~~. This rule ~~((describes minimum nexus~~

~~thresholds applicable to apportionable activities that are effective after May 31, 2010)) explains the current and historical standards for substantial nexus in Washington beginning June 1, 2010.~~

~~(b) WAC 458-20-19403 **Royalty receipts attribution.** This rule describes the attribution of royalty income for the purposes of single factor receipts apportionment ((and applies only to tax liability incurred)) for periods after May 31, 2010.~~

~~(c) WAC 458-20-19404A and 458-20-19404 **Single factor receipts apportionment—Financial institutions.** ((This)) These rules describe((s)) the application of single factor receipts apportionment to certain income of financial institutions ((and applies only to)), for tax liability incurred ((after May 31, 2010.~~

~~(d) 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.~~

~~(e) WAC 458-20-14601 **Financial institutions Income apportionment.** This rule describes the apportionment of income for financial institutions for tax liability incurred prior to June 1, 2010)) between June 1, 2010, and December 31, 2015, and on or after January 1, 2016, respectively.~~

~~(106) **Definitions.** The following definitions apply to this rule:~~

~~(a) "**Apportionable activities**" has the same meaning as used in WAC 458-20-19401 Minimum nexus thresholds for apportionable activities.~~

~~(b) "**Apportionable income**" means apportionable receipts less the exemptions and deductions allowable under chapter 82.04 RCW.~~

~~(c) "**Apportionable receipts**" means gross income of the business from engaging in apportionable activities, including income received from apportionable activities attributed to locations outside this state.~~

~~(d) "**Business activities tax**" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. ((In the case of sole proprietorships and pass-through entities,)) The term also includes personal income taxes or corporate income taxes if the gross income from apportionable activities is included in the gross income subject to the personal income tax or corporate income tax, as the case may be. The term "business activities tax" does not include retail sales tax, use tax, or similar transaction taxes, imposed on the sale or acquisition of goods or services, whether or not ((named)) labeled as a gross receipts tax or a tax imposed on the privilege of doing business.~~

~~(e) "**Customer**" means a person or entity to whom the taxpayer makes a sale, grants the right to use intangible property, or renders services or from whom the taxpayer otherwise directly or indirectly receives gross income of the business.~~

~~(i) If the taxpayer ((performs)) engages in apportionable ((services)) activities for the benefit of a third party, the term "customer" means the third party beneficiary.~~

~~(ii) The department will consider the terms of the contract and all other books and records as a whole to determine whether a "third-party beneficiary" relationship exists. Where the taxpayer does not render services under a contract or otherwise does not provide the department with a contract, the department will proceed, in such manner~~

as it may deem best, to obtain facts and information to identify the customer.

Example 1. Assume a parent purchases apportionable services for their child. The child is the customer for the purpose of determining where the benefit is received.

(f) **"Reasonable method of proportionally attributing"** means a method of determining where the benefit of an activity is received and where the receipts are attributed that is uniform, consistent, and accurately reflects the market, and does not distort the taxpayer's market.

(g) **"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.

(h) (i) **"Taxable in another state"** means either:

(A) The taxpayer is subject to a business activities tax by another state on the taxpayer's income received from engaging in apportionable activity; or

(B) The taxpayer is not subject to a business activities tax by another state on the taxpayer's income received from engaging in apportionable activity, but the taxpayer meets the substantial nexus thresholds described in WAC 458-20-19401 for that state.

(ii) The determination of whether a taxpayer is taxable in a foreign country or political subdivision of a foreign country is made at the country or political subdivision level.

Example 2. Assume Taxpayer A is subject to a business activity tax in State X of Mexico (e.g., Taxpayer pays tax to State X), but nowhere else in Mexico. Also, assume that Taxpayer A is not subject to any national business activity tax in Mexico and does not meet the substantial nexus thresholds described in WAC 458-20-19401 for Mexico as a whole. In this case, Taxpayer is "taxable in another state," namely the Mexican state of State X, but not taxable in any other portion or any other state of Mexico.

Example 3. Assume Taxpayer B is not subject to any business activity taxes in Mexico, but satisfies the substantial nexus thresholds described in WAC 458-20-19401 for Mexico as a whole. Taxpayer B is "taxable in (all) another state," namely the foreign country of Mexico.

PART 2. OVERVIEW OF SINGLE FACTOR RECEIPTS APPORTIONMENT.

(201) **Single factor receipts apportionment generally.** Except as provided in WAC 458-20-19404 and 458-20-19404A persons earning apportionable income who have substantial nexus with Washington as specified in WAC 458-20-19401 and who are also taxable in another state must use the apportionment (~~method provided~~) formula described in this rule to determine their taxable income from apportionable activities for B&O tax purposes. Taxable income is determined by multiplying apportionable income from each apportionable activity by the receipts factor for that apportionable activity.

This formula is:

$$\text{(Taxable income)} = \text{(Apportionable income)} \times \text{(Receipts factor)} = \frac{\text{(Apportionable receipts - Exemptions and deductions)}}{\text{(Receipts factor)}} \times$$

See Part 4 of this rule for a discussion of the receipts factor.

(202) **Tax year.** The receipts factor applies to each tax year. A tax year is the calendar year, unless the taxpayer has specific permission from the department to use another period. (RCW 82.32.270.)

For the purposes of this rule, "tax year" and "calendar year" have the same meaning.

PART 3. HOW TO ATTRIBUTE RECEIPTS.

(301) **Attribution of receipts generally.** Except as specifically provided for in WAC 458-20-19403 for the attribution of apportionable royalty receipts, this Part 3 explains how to attribute apportionable receipts. Receipts are attributed to states based on a cascading method or series of steps. The department expects that most taxpayers will attribute apportionable receipts based on subsection (301)(a)(i) of this ((subsection)) rule because the department believes that ((either)) the taxpayer will have access to books and records that contain the data to know where the ((benefit is)) customer actually received ((or)) the benefit of the taxpayer's service; if not, the department believes that the taxpayer will be able to use a "reasonable method of proportionally attributing receipts" ((will generally be available. These)) based on the best data available to determine where the customer received the benefit of the taxpayer's service. A taxpayer that reports apportionable receipts to this state, and uses a reasonable method of proportionally attributing receipts, must keep and provide upon request from the department all suitable books and records that are necessary to explain the reasonable method of proportionally attributing the taxpayer's receipts to this state. The steps in this cascading series are:

(a) Where the customer received the benefit of the taxpayer's service (see subsections ~~((+302+))~~ (303) through (304) of this rule for an explanation and examples of the benefit of the service);

(i) (A) If a taxpayer can reasonably determine the amount of a specific apportionable receipt that relates to a specific benefit of the services received in a state, that apportionable receipt is attributable to the state in which the benefit is received (see Example 12 in this rule).

(B) When a customer receives the benefit of the taxpayer's services in this and one or more other states and the amount of gross income of the business that was received by the taxpayer in return for the services received by the customer in this state can be reasonably determined by the taxpayer, such amount of gross income must be attributed to this state. This may be shown by application of a reasonable method of proportionally attributing the benefit among states. The result determines the receipts attributed to each state. Under certain situations, the use of data based on an attribution method specified in subsection (301)(b) through (f) of this ((subsection)) rule may also be a reasonable method of proportionally attributing receipts among states (see Example ~~((s 4 and 5 below))~~ 17 in this rule).

(ii) If a taxpayer is unable to separately determine or use a reasonable method of proportionally attributing the benefit of the services in specific states under subsection (301)(a)(i) of this ((subsection)) rule, and the customer received the benefit of the service in multiple states, the apportionable receipt is attributed to the state in which the customer primarily received the benefit of the service ((was primarily received)). Primarily means, in this case, more than fifty percent.

(b) If the taxpayer is unable to attribute an apportionable receipt under subsection (301)(a) of this ((subsection)) rule, the apportionable receipt must be attributed to the state from which the customer ordered the service. Subsection (306) of this rule explains the meaning of "unable to attribute."

(c) If the taxpayer is unable to attribute an apportionable receipt under subsection (301)(a) or (b) of this ((subsection)) rule, the apportionable receipt must be attributed to the state to which the billing statements or invoices are sent to the customer by the taxpayer.

(d) If the taxpayer is unable to attribute an apportionable receipt under subsection (301)(a), (b), or (c) of this ((subsection)) rule, the apportionable receipt must be attributed to the state from which the customer sends payment to the taxpayer.

(e) If the taxpayer is unable to attribute an apportionable receipt under subsection (301)(a), (b), (c), or (d) of this ((subsection)) rule, the apportionable receipt must be attributed to the state where the customer is located as indicated by the customer's address:

(i) Shown in the taxpayer's business records maintained in the regular course of business; or

(ii) Obtained during consummation of the sale or the negotiation of the contract, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(f) If the taxpayer is unable to attribute an apportionable receipt under subsection (301)(a), (b), (c), (d), or (e) of this ((subsection)) rule, the apportionable receipt must be attributed to the commercial domicile of the taxpayer.

(g) The taxpayer may not use an attribution method that distorts the apportionment of the taxpayer's apportionable receipts. A taxpayer that reports apportionable receipts to this state must keep, and provide upon request from the department, all suitable books and records that are necessary to demonstrate that the attribution method used does not distort the apportionment of the taxpayer's apportionable receipts.

(h) Except as otherwise provided in this rule, the taxpayer must use the same attribution method for all apportionable receipts in a tax year from the same apportionable activity.

Example 4. Engineering Co. contracts with Phone Manufacturer to provide design services for Phone Manufacturer's upcoming line of cell phones. Engineering Co. separately contracts with Phone Manufacturer to solicit sales of Phone Manufacturer's phones on a commissioned sales basis. Engineering Co. may use different attribution methods for its apportionable receipts from design services and commissioned sales respectively, even if both services are taxable under the same B&O tax classification, because the design services and commissioned sales are separate services.

(302) **Examples - Not commercially reasonable.** ((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. The examples in this rule assume all gross income received by the taxpayer is from engaging in apportionable activities. Unless otherwise stated, the examples do not apply to tax liability prior to June 1, 2010.

When an example states that a particular attribution method is a reasonable method of proportionally attributing the benefit of a service, this does not preclude the existence of other reasonable methods of proportionally attributing the benefit depending on the specific facts and circumstances of a taxpayer's situation.)

Example ((4)) 5. Assume Law Firm has thousands of charges to clients((-)), and that Law Firm can show it is not commercially reasona-

ble for Law Firm to track each charge to each client to determine where the benefit related to each service is received. Assume the scope of Law Firm's practice is such that it is reasonable to assume that the benefits of Law Firm's services are received at the location of the customer as reflected by the customer's billing address. Under these circumstances, Law Firm can use the billing addresses of each client as a reasonable method of proportionally attributing the benefit of its services.

Example ((5)) 6. Same facts as Example ((4)) 5 except, Law Firm has a single client that represents a ((statistically)) significant portion of its ((revenue)) apportionable income and whose billing address is unrelated to any of the services provided. In this case, using the billing address of this client would not fairly relate to where the customer received the benefit of the services. Using the billing address for this client to determine where the benefit is received would significantly distort the apportionment of Law Firm's receipts. Therefore, Law Firm would need to evaluate the specific services provided to that client to determine where the benefits of those services are received ((and)), but may use billing addresses to attribute the income received from other clients.

Example ((6)) 7. Assume Taxpayer R attributes an apportionable receipt based on its customer's billing address, using subsection (301)(c) of this ((subsection)) rule, and the billing address is a P.O. Box located in another state. Taxpayer R also knows that mail delivered to this P.O. Box is automatically forwarded to the customer's actual location. In this case, use of the billing address is not allowed because it would distort the apportionment of Taxpayer R's receipts.

(303) **Benefit of the service explained.** The first two cascading steps (subsection (301)(a)(i) and (ii) of this rule) used to attribute apportionable receipts to a state are based on where the taxpayer's customer receives the benefit of the service. This subsection explains the framework for determining where the customer receives the benefit of a service ((is received)).

(a) (i) If the taxpayer's service relates to real property, then the customer receives the benefit ((is received)) where the real property is located.

(ii) The following is a nonexclusive list of services that relate to real property:

- ~~((i))~~ (A) Architectural;
- ~~((ii))~~ (B) Surveying;
- ~~((iii))~~ (C) Janitorial;
- ~~((iv))~~ (D) Security;
- ~~((v))~~ (E) Appraisals; and
- ~~((vi))~~ (F) Real estate brokerage.

(b) ~~((If the taxpayer's service relates to tangible personal property, then the benefit is received where the tangible personal property is located or intended/expected to be located.~~

~~(i) Tangible personal property is generally treated as located where the place of principal use occurs. If the tangible personal property is subject to state licensing (e.g., motor vehicles), the principal place of use is presumed to be where the property is licensed; or~~

~~(ii) If the tangible personal property will be created or delivered in the future, the principal place of use is where it is expected to be used or delivered.~~

~~(iii) The following is a nonexclusive list of services that relate to tangible personal property:~~

- ~~(A) Designing specific/unique tangible personal property;~~
- ~~(B) Appraisals;~~
- ~~(C) Inspections of the tangible personal property;~~
- ~~(D) Testing of the tangible personal property;~~
- ~~(E) Veterinary services; and~~
- ~~(F) Commission sales of tangible personal property.)~~ **(Reserved.)**

(c) If ((the taxpayer's service does not relate to real or tangible personal property,)) subsection (303) (a) of this rule does not apply, the taxpayer's service is provided to a customer engaged in business, and the service relates to the customer's business activities, then the customer receives the benefit ((is received)) of the service where the customer's related business activities occur.

A customer's related business activities will generally occur either in the customer's market or at the customer's business location(s).

(i) Customer's market. The customer's related business activities occur in the customer's market if the taxpayer's service is:

- (A) Promoting the customer's products (i.e., goods and services);
- (B) Engaging in or completing the customer's product sales; or
- (C) Establishing or maintaining the customer's market. The department will consider the nonexclusive list of activities provided by

WAC 458-20-193(102) (d) (i) through (vii) in determining whether a service is establishing or maintaining the customer's market.

(ii) The determination of a customer's market depends on the customer's facts and circumstances.

(iii) Customer's business location(s). The customer's related business activities occur at the customer's business location(s) if subsection (303) (c) (i) of this rule does not apply.

(iv) The customer's business location(s) is determined as follows:

(A) If the taxpayer's service requires the customer to be physically present, then the customer's business location(s) is where the customer is located when the taxpayer provides the service.

(B) If the taxpayer's service does not require the customer to be physically present, and the taxpayer's service relates to a specific, known business location(s), then the customer's business location(s) is that specific, known business location(s).

(C) If subsection (303) (c) (iv) (A) and (B) of this rule do not apply, then the customer's business location is the customer's principal place of business or commercial domicile.

(v) The following is a nonexclusive list of business related services:

~~((i))~~ (A) Designing, appraisal, inspection, or testing of tangible personal property;

(B) Developing a business management plan;

~~((ii))~~ (C) Commission sales (other than sales of real ((or tangible personal)) property);

~~((iii))~~ (D) Debt collection services;

~~((iv))~~ (E) Legal and accounting services not specific to real ((or tangible personal)) property; and

~~((v))~~ (F) Advertising services((; and

~~(vi) Theater presentations).~~

(d) If ((the taxpayer's service does not relate to real or tangible personal property, is either provided to a customer not engaged in business or unrelated to the customer's business activities; and))

subsection (303) (a) and (c) of this rule do not apply, then the location(s) where the customer receives the benefit of the service is determined as follows:

(i) If the taxpayer's service requires the customer to be physically present, then the customer receives the benefit ((is received)) of the service where the customer is located when the taxpayer performs the service ((is performed)). The following is a nonexclusive list of services that require the customer to be physically present:

- (A) Medical examinations;
- (B) Hospital stays;
- (C) Haircuts; and
- (D) Massage services.

(ii) If the taxpayer's service does not require the customer to be physically present, and the taxpayer's service relates to a specific, known location(s), then the customer receives the benefit ((is received)) at ((those)) that location(s). The following is a nonexclusive list of services related to a specific, known location(s):

- (A) Wedding planning;
- (B) Receptions;
- (C) Party planning;
- (D) Travel agent and tour operator services (see Example 39); and
- (E) Preparing ((and/or)) or filing state and local tax returns (see Example 38).

(iii) If subsection (303)(d)(i) and (ii) of this ((subsection)) rule do not apply, the customer receives the benefit of the service ((is received)) where the customer resides. The following is a nonexclusive list of services whose benefit is received at the customer's residence:

- (A) Drafting a will (see Example 40);
- (B) Preparing ((and/or)) or filing federal tax returns (see Examples 38 and 41);
- (C) Selling investments; and
- (D) Blood tests (not blood drawing).

(e) **Special rule for extension of credit.** See subsection (305) of this rule for special rules attributing income related to loans (secured and unsecured) and credit cards that is received by persons who are not financial institutions as defined in WAC 458-20-19404.

(304) Examples of the application of the benefit of service analysis and reasonable methods of proportionally attributing receipts.

(a) Services related to real property:

Example ((7)) 8. Architect drafts plans for a building to be built in Washington. Architect's services relate to real property which is located in Washington, therefore the customer receives the benefit of that service in Washington at the location of the real property. Architect's receipts for this service are solely attributed to Washington because the customer receives the entire benefit ((is received)) in Washington.

Example ((8)) 9. Franchisor hires Taxpayer, an architect, to create a design of a standardized building that will be used at four locations in Washington and two locations in Oregon. Taxpayer's services relate to real property at those six locations, therefore the customer receives the benefit of the service at the four Washington locations and the two Oregon locations. Taxpayer will attribute 2/3 (4 of 6 sites) of the receipts for this service to Washington and 1/3 (2 of 6 sites) of the receipts to Oregon.

Example ((9)) 10. Assume the same facts as Example ((8)) 9 except Franchisor will use the same design in all 50 states for all its fran-

chisee's locations. Taxpayer and Franchisor do not know at the time the service is provided (and cannot reasonably estimate) how many franchise locations will exist in each state. ~~((Therefore,))~~ If there is no reasonable means of proportionally attributing receipts at the time the services are performed, and it is clear that no state will have a majority of the franchise locations ~~((Accordingly))~~, the apportionable receipts must be attributed following the steps in subsection (301)(b) through (f) of this rule.

Example ~~((10))~~ 11. Real estate broker located in Florida receives a commission for arranging the sale of real property located in Washington. The real estate broker's service is related to the real property, therefore the customer receives the benefit ~~((is received))~~ in Washington, where the real property is located, and the commission income is attributed to Washington.

(b) ~~((Services related to tangible personal property))~~ **Reserved.**

~~((Example 11. Big Manufacturing hires an engineer to design a tool that will only be used in a factory located in Brewster, Washington. Big Manufacturing receives the benefit of the engineer's services at a single location in Washington where the tool is intended to be used. Therefore, 100% of engineer's receipts from this service must be attributed to Washington.~~

Example 12. The same facts as in Example 11, except Big Manufacturing will use the tool equally in factories located in Brewster and in Kapa'a, Hawaii. Therefore, Big Manufacturer receives the benefit of the service equally in two states. Because the benefit of the service is received equally in both states, a reasonable method of proportionally attributing receipts would be to attribute 1/2 of the receipts to each state.

Example 13. Taxpayer, a commissioned salesperson, sells tangible personal property (100 widgets) for Distributor to XYZ Company for delivery to Spokane. Distributor receives the benefit of Taxpayer's service where the tangible personal property will be delivered. Therefore, Taxpayer will attribute the commission from this sale to Washington.

Example 14. Same facts as in Example 13, but the widgets are to be delivered 50 to Spokane, 25 to Idaho, and 25 to Oregon. In this case, the benefit is received in all three states. Taxpayer shall attribute the receipts (commission) from this sale 50% to Washington, 25% to Idaho, and 25% to Oregon where the tangible personal property is delivered to the buyer.

Example 15. Training Company provides training to Customer's employees on how to operate a specific piece of equipment used solely in Washington. Customer receives the benefit of the service where the equipment is used, which is in Washington. Therefore, Training Company will attribute 100% of its receipts received from Customer to Washington.)

(c) **Services related to customer's business activities.** The examples in this subsection assume that the customer is engaged in business and the services relate to the customer's business activities.

~~((Example 16. Manufacturer hires Law Firm to defend Manufacturer in a class action product liability lawsuit involving Manufacturer's Widgets. The benefit of Law Firm's services relates to Manufacturer's widget selling activity in various states. A reasonable method of proportionally attributing receipts in this case would be to attribute the receipts to the locations where the Manufacturer's Widgets were delivered, which relates to Manufacturer's business activities.))~~ (i)

The following are examples where the customer's related business activities occur in the customer's market.

Example 12. Taxpayer, a commissioned salesperson, sells tangible personal property (100 widgets) for Distributor to XYZ Company for delivery to Spokane. Taxpayer's service is engaging in and completing Distributor's product sales. Distributor receives the benefit of Taxpayer's service in its market, which in this case is Spokane, the location where XYZ Company takes delivery of the widgets. Taxpayer will attribute the commission income from this sale to Washington.

Example 13. Same facts as in Example 12, but 50 of the widgets are to be delivered to Spokane, 25 to Idaho, and 25 to Oregon. In this case, Distributor receives the benefit of Taxpayer's services in all three states. Taxpayer will attribute the receipts (commission income) from this sale 50% to Washington, 25% to Idaho, and 25% to Oregon, the locations where XYZ takes delivery of the widgets.

Example ((17)) 14. Debt Collector provides debt collection services to ABC. ((The benefit of Debt Collector's services relates to ABC's selling activity in various states.)) Debt Collector's service is completing ABC's product sales. ABC receives the benefit of Debt Collector's service in ABC's market. It is reasonable to assume that ABC's market is where the debtors are located ((is the same as where ABC's business activity occurred)) in various states. If Debt Collector is able to attribute specific receipts to a specific debtor, then the receipt is attributed to where the debtor is located.

Example ((18)) 15. Same facts as Example ((17)) 14, except Debt Collector is paid a lump sum and is unable to attribute specific benefits with specific debtors. In this case, a reasonable method of proportionally attributing benefits/receipts should be employed. Depending on Debt Collector's specific facts and circumstances, a reasonable method of proportionally attributing benefits/receipts could be: Relative number of debtors in each state; relative debt actually collected from debtors in each state; the relative amount of debt owed by debtors in each state; or another method that does not distort the apportionment of Debt Collector's receipts.

((**Example 19.** Training Company provides training to Customer's employees who are all located in State A. The training is provided in State B. The training relates to the employees' ethical behavior within Customer's organization. Customer receives the benefit of Training Company's service in State A, where Customer's office is located and the employees presumably practice their ethical behavior. Training Company must attribute the apportionable receipts to State A where the benefit is solely received.

Example 20. Same facts as Example 19, except the training is provided for employees from several states and Training Company knows where each employee works. The benefit of the Training Company's services is received in those several states. Attributing receipts from the training based on where the employees work is a reasonable method of proportionally attributing the receipts income.))

Example ((21)) 16. Call Center provides "customer service" services to Retailer who has customers in all 50 states. Call Center's services ((relate to Retailer's selling activity in all 50 states, therefore)) may be promoting Retailer's products to potential new customers, and establishing or maintaining Retailer's market by supporting existing customers. Retailer receives the benefit of Call Center's services in its market, which in this case is all 50 states. Call Center has offices in Iowa and Alabama that answer questions about Retailer's products. Call Center records Retailer's customer's calls by

area code. Call Center may attribute receipts received from Retailer based on the number of calls from area codes assigned to each state. This would be a reasonable method of proportionally attributing receipts notwithstanding the fact that mobile phone numbers and related area codes may not exactly reflect the physical location of the customer in all cases.

Example ((22)) 17. Taxpayer provides internet advertising services to national retail chains, regional businesses, businesses with a single location, and businesses that operate solely over the Internet. Taxpayer's services are promoting customers' products. Generally, each customer receives the benefit of ((the)) Taxpayer's advertising services ((is received where the customer's related business activities occur)) in each customer's market. Taxpayer determines, based on its books and records, where each customer receives the benefit in its market. If Taxpayer cannot obtain this information, it would then use a reasonable method of proportionally attributing the benefit of its service to the customer's market. Depending on what products or services ((are being provided by)) Taxpayer's customers are providing, the use of relative ((population)) internet connections in the customer's market based on Federal Communications Commission (FCC) data may be a reasonable method of proportionally attributing the benefit of Taxpayer's services to customers' markets.

Example ((23)) 18. Oregon Newspaper sells newspaper advertising to Merlin's Potion Shop. Merlin's only makes over-the-counter sales from its single location in Vancouver, Washington. Oregon Newspaper is promoting Merlin's Potion Shop's products. Merlin's Potion Shop receives the benefit of ((the)) Oregon Newspaper's advertising services in its market in Washington, where it makes sales to its customers. In this case Oregon Newspaper will report 100% of its receipts ((received)) from Merlin's to Washington.

Example 19. Tech Developer provides IP development services for its customer, Licensing Company. Licensing Company maintains a portfolio of IP that it licenses to third party customers. Tech Developer creates all of the IP in Licensing Company's portfolio, and Licensing Company receives all rights to Tech Developer's IP. Licensing Company does not conduct any IP development of its own. Tech Developer's service is engaging in or completing Licensing Company's sales. Licensing Company receives the benefit of Tech Developer's service in Licensing Company's market. In this case Licensing Company's market is where the licensees use Licensing Company's IP.

Example 20. Marketer A provides marketing services for Seller, and subcontracts its marketing services to Marketer B.

Marketer A's services are promoting Seller's products. Seller receives the benefit of Marketer A's services in Seller's market.

Marketer B's services are engaging in or completing Marketer A's product sales. Marketer A receives the benefit of Marketer B's services in Marketer A's market, which in this case, is where Seller receives the benefit of Marketer A's service.

In this case Marketer B will attribute its receipts from Marketer A to Seller's market using information supplied by Marketer A about Seller's market. If Marketer A and Marketer B are affiliated, the presumption is that Marketer A should be able to provide to Marketer B the information about Seller's market.

Example 21. Investment Manager manages a mutual fund. Investment Manager receives a fee from the mutual fund for managing the fund based on the value of the assets in the fund on particular days. Investment Manager knows or should know the identity of the investors in

the fund and their mailing addresses. Investment Manager's service is establishing or maintaining the fund's market. In this case, it is reasonable to assume that the fund's market is where the investors are located. Investment Manager will attribute its receipts from managing the fund to those investor locations.

Example 22. Staffing Co. contracts with ISP Inc., an internet service provider, to provide supplemental marketing employees at ISP's sole office in State A. ISP sells internet services in States A, B, and C. The activities of Staffing Co.'s employees are promoting ISP's products. ISP receives the benefit of Staffing Co.'s service in ISP's market, which in this case is States A, B, and C.

Example 23. Management Co. provides customer support services to Customer A. Customer A's only physical location is in State Z. Customer A makes sales throughout the United States. Per the contract between Management Co. and Customer A, customer support services provided by Management Co. consist of operating a call center to handle Customer A's calls and emails related to services and sales. Management Co.'s customer support services are establishing and maintaining Customer A's market. Customer A receives the benefit of Management Co.'s service in Customer A's market throughout the United States.

(ii) The following are examples where the customer's related business activities occur at the customer's business location(s). In these examples, the taxpayer's service is not promoting the customer's products, is not engaging in or completing the customer's product sales, and is not establishing or maintaining the customer's market.

Example 24. Same facts as Example 22, except Staffing Co. provides supplemental human resources employees to work at ISP Inc.'s office in State A. ISP receives the benefit of Staffing Co.'s service at ISP's business location(s). ISP's only office location is in State A. In this case the staffing service does not require ISP to be physically present, but relates to a specific, known location, ISP's office in State A. ISP receives the benefit of Staffing Co.'s service in State A.

Example 25. Same facts as Example 23, except Management Co. also provides network support services to Customer A. Per the contract between Management Co. and Customer A, network support services provided by Management Co. consist of providing administrative, technical, and engineering support staff to develop, implement, and maintain all internal software elements for Customer A. Customer A receives the benefit of Management Co.'s service at Customer A's business location(s). In this case the network support services do not require Management Co. to be physically present, but relate to a specific, known location, Customer A's physical location in State Z. Customer A receives the benefit of Management Co.'s network support services in State Z.

Example 26. Big Manufacturing hires an engineer to design a tool that will only be used in a factory located in Brewster, Washington. Big Manufacturing receives the benefit of the engineer's services at its business location. In this case the design service does not require Big Manufacturing to be physically present, but relates to a specific, known location, the single location in Washington where Big Manufacturing intends to use the tool. One hundred percent of engineer's receipts from this service must be attributed to Washington.

Example 27. The same facts as in Example 26, except Big Manufacturing will use the tool equally in factories located in Brewster and in Kapa'a, Hawai'i. Big Manufacturing receives the benefit of the service at its business locations equally in two states. As a result,

a reasonable method of proportionally attributing receipts would be to attribute 1/2 of the receipts to each state.

Example 28. Training Company provides training to Customer's employees on how to operate a specific piece of equipment used solely in Washington. Customer receives the benefit of the service at its business location(s). In this case the training service does not require the customer to be physically present, but relates to a specific, known location in Washington, where employees use the equipment. Training Company will attribute 100% of its receipts received from Customer to its business location in Washington.

Example 29. Training Company provides manufacturing process improvement training to Customer's employees who are all located in State A. The training is provided from State B. Customer receives the benefit of Training Company's service at Customer's business location(s). In this case the training service does not require Customer's employees to be physically present, but it relates to the specific, known location at Customer's office in State A, where the employees improve the manufacturing process. Training Company must attribute the apportionable receipts to State A where Customer solely receives the benefit of Training Company's service.

Example 30. Same facts as Example 29, except the training is provided for employees from several states and Training Company knows where each employee works. Training Company's services relate to Customer's specific, known business locations where the employees work in those several states. Attributing receipts from the training based on where the employees work is a reasonable method of proportionally attributing the receipts income.

Example 31. Training Company provides sales strategy training to Retailer's sales employees who are all located at Retailer's office in State A but make sales to Retailer's customers in all 50 states. The training is provided from State B via a combination of in-person and virtual attendance. Retailer receives the benefit of Training Company's service at Retailer's business location(s). In this case the training service does not require Retailer's employees to be physically present, but it relates to the specific, known location at Retailer's office in State A, where Retailer's employees are located. Retailer receives the benefit of Training Company's service at Retailer's business location in State A.

Example 32. Manufacturer hires Law Firm to defend Manufacturer in a class action product liability lawsuit involving Manufacturer's Widgets. Manufacturer's principal place of business is in Washington. Manufacturer receives the benefit of Law Firm's service at Manufacturer's business location(s). In this case Law Firm's service does not require Manufacturer to be physically present, and does not relate to a specific, known business location(s). Manufacturer's business location is its principal place of business or commercial domicile in Washington, where Manufacturer receives the benefit of Law Firm's services.

Example 33. Game Publisher hires Developer to perform software development services in connection with a new computer game that Game Publisher will release in the following year. Under the contract between Game Publisher and Developer, Developer's primary duty is to deliver a "beta" version of the computer game that Game Publisher will use for further development. Developer performs all of its software development activities at its office in Seattle. After Developer delivers a beta version of the game, Game Publisher will perform additional development on the game at its locations in California. Game

Publisher receives the benefit of Developer's service at Game Publisher's business location(s). In this case Developer's service does not require Game Publisher to be physically present, but relates to the specific, known business locations in California where Game Publisher performs additional development. Developer will attribute 100% of its receipts from Game Publisher to California where Game Publisher receives the benefit of the service.

Example 34. Game Publisher received consumer complaints about its game console overheating and contracts with QA Company to determine the cause of and a possible solution to the problem. Under the contract, QA Company will receive compensation for providing testing services specific to the game console. Game Publisher will use QA Company's findings and recommendation to determine how to repair the video game console at its manufacturing location in California. Game Publisher receives the benefit of QA Company's service at Game Publisher's business location(s). In this case QA Company's service does not require Game Publisher to be physically present, but relates to the specific, known business location(s) in California where Game Publisher will perform additional development to resolve the issue. QA Company will attribute 100% of its receipts from Game Publisher to California where Game Publisher receives the benefit of the service.

Example ((24)) 35. Company A provides human resources services to Racko, Inc. which has three offices that use those services in Washington, Oregon, and Idaho. Racko sells widgets and has customers for its widgets in all 50 states. Racko receives the benefit of ((the)) Company A's services ((performed by Company A is received)) at Racko's business locations. In this case Company A's services do not require Racko's employees to be physically present, but relate to the specific, known business locations of Racko's offices in Washington, Oregon, and Idaho. Assuming that each office is approximately the same size and uses the services to approximately the same extent, then attributing 1/3 of the receipts to each of the states in which Racko has locations using the services is a reasonable method of proportionally attributing Company A's receipts from Racko.

Example ((25)) 36. Director serves on the board of directors for DEF, Inc. Director's services relate to the general management of DEF((, Inc.)). DEF((, Inc.)) is Director's customer and receives the benefit of Director's services at ((its corporate)) DEF's business location(s). In this case Director's services do not require any employees of DEF to be physically present, and do not relate to any specific, known business location. DEF's business location is its principal place of business or commercial domicile. ((Therefore,)) Director must attribute the receipts earned from Director's services to DEF to DEF's ((corporate)) principal place of business or commercial domicile.

(d) Services not related to real ((or tangible personal)) property and either provided to customers not engaged in business or unrelated to the customer's business activities.

Example ((26)) 37. A Washington resident travels to California for a medical procedure. Because the Washington resident must be physically in California, the Washington resident receives the benefit of the service in California. ((Therefore,)) The service provider must attribute its income from the procedure to California.

Example ((27)) 38. Washington accountant prepares a Nevada couple's Arizona and Oregon state income tax returns as well as their federal income tax return. The benefit of the accountant's service associated with the state income tax returns is attributed to Arizona and Oregon because these returns relate to specific locations

(states). The benefit associated with the federal income tax return is attributed to the couple's residence. The fees for the state tax returns are attributed to Arizona and Oregon, respectively, and the fee for the federal income tax return is attributed to Nevada.

Example ((28)) 39. Tour Operator provides cruises through Washington's San Juan Islands for four days and Victoria, British Columbia for one day. Tour Operator's customers receive the benefit of ((the tour is received)) Tour Operator's services where the tour occurs. Tour Operator may use a reasonable method of proportionally attributing the benefit to determine that its customers receive 80% of the benefit in Washington and 20% outside of Washington. ((Therefore,)) Tour Operator must attribute 80% of apportionable receipts to Washington and 20% to British Columbia.

Example ((29)) 40. A Washington couple hires a Washington attorney to prepare a last will and testament for Daughter who lives in California. Daughter is a third-party beneficiary and receives the benefit of the attorney's services in California because that is where Daughter lives. Washington Attorney must attribute the fee to California.

Example ((30)) 41. A Washington couple hires a California accountant to prepare their joint federal income tax return. Because the couple does not have to be physically present for the accountant to perform services and services are not related to a specific location, the Washington couple receives the benefit of the accountant's services at their residence in Washington. California accountant must attribute its fee for this service to Washington.

Example ((31)) 42. An Arizona resident retains a Washington stock broker to handle its investments. The stock broker receives orders from the client and executes trades of securities on the New York Stock Exchange. Because (a) the Arizona resident is not investing as part of a business; (b) the activity does not relate to real ((or tangible personal)) property; (c) ((and)) the client does not need to be physically present for the stock broker to perform its services; and (d) the services are not related to a specific location, the client receives the benefit of the services at client's place of residence. Washington stockbroker must attribute the fee to Arizona.

~~((Example 32. Investment Manager manages a mutual fund. Investment Manager receives a fee for managing the fund based on the value of the assets in the fund on particular days. Investment Manager knows or should know the identity of the investors in the fund and their mailing addresses. The fees received by Investment Manager (whether from the mutual fund or from individual investor's accounts) are for the services provided to the investors. Investment Manager's services do not relate to real or tangible personal property and do not require that the client be physically present, therefore, the benefit of Investment Manager's services is received where the investors are located and Investment Manager's apportionable receipts must be attributed to those locations.))~~

(305) Special rules related to extending credit performed by non-financial institutions. Businesses not included in the definition of a financial institution under WAC 458-20-19404 that provide services related to the extension of credit must attribute their income from such activities as follows:

(a) **Activities related to extending credit where real property secures the debt.** Such activities include, but are not limited to, servicing loans, making loans subject to deeds of trust or mortgages (including any fees in the nature of interest related to the loan),

and buying and selling loans. Apportionable receipts from these activities are attributed in the same manner as a financial institution attributes these apportionable receipts under WAC 458-20-19404.

(b) **Activities related to credit cards.** Such activities include, but are not limited to, issuing credit cards, servicing, and billing. Apportionable receipts from these activities are attributed to the billing address of the card holder.

(c) **Other activities related to extending credit where real property does not secure the debt.** Such activities include, but are not limited to, servicing loans, making loans (including any fees related to such loans), and buying and selling loans. Apportionable receipts from these activities are attributed in the same manner a financial institution attributes income under WAC 458-20-19404.

(d) **All other apportionable receipts from such businesses are attributed using subsections (301) through (304) of this rule or WAC 458-20-19403.**

(306) **What does "unable to attribute" mean?** A taxpayer is "unable to attribute" apportionable receipts when the taxpayer has no commercially reasonable means to acquire the information necessary to attribute the apportionable receipts. Cost and time may be considered to determine whether a taxpayer has no commercially reasonable means to acquire the information necessary to attribute apportionable receipts.

Example ((33)) 43. ~~((One))~~ The marketing office of ZYX LLC has information that can easily be used to determine a reasonable proportional attribution of receipts, but does not provide this information to the accounting office preparing the tax returns. ZYX ~~((LLC))~~ must use the information maintained by the marketing office to attribute its receipts.

Example ((34)) 44. CBA, Inc. is entitled to receive information from an affiliate or unrelated third party which it could use to determine where the customer receives the benefit of ~~((its))~~ CBA's services ~~((is received))~~, but chooses not to obtain that information. CBA ~~((, Inc.))~~ must use the information maintained by the affiliate or unrelated third party to attribute its apportionable receipts.

Example ((35)) 45. Same facts as Example ~~((34))~~ 44, except that the information is raw data that must be formatted and otherwise processed at a cost that exceeds a reasonable estimate of the possible difference in the amount of tax CBA ~~((, Inc.))~~ would owe if it used another attribution method authorized in subsection (301) (b) through (f) of this rule. In this case, it is not commercially reasonable for CBA ~~((, Inc.))~~ to use this data to determine where to attribute its income.

PART 4. RECEIPTS FACTOR.

(401) **General.** The receipts factor is a fraction that applies to apportionable income for each calendar year. Taxpayers must calculate a separate receipts factor for each apportionable activity ~~((business and occupation))~~ B&O tax classification) engaged in.

(402) **Receipts factor calculation.** The receipts factor is: Washington attributed apportionable receipts divided by world-wide apportionable receipts less throw-out income (see subsection (403) of this section). The receipts factor expressed algebraically is:

$$\text{(Receipts factor)} = \frac{\text{(Washington apportionable receipts)}}{\text{((Worldwide apportionable receipts) - (Throw-out income))}}$$

(a) The numerator of the receipts factor is: The total apportionable receipts attributable to Washington during the calendar year from engaging in the apportionable activity.

(b) The denominator of the receipts factor is: The total (worldwide, including Washington) apportionable receipts from engaging in the apportionable activity during the calendar year, less throw-out income.

Example ((36)) 46. NOP, Inc. has \$400,000 of receipts attributed to Washington and \$1,000,000 of worldwide receipts. Assuming that there is no throw-out income, NOP's receipts factor is 40% ($400,000/1,000,000$).

(c) In the very rare situation where the receipts factor (after reducing the denominator by the throw-out income) is zero divided by zero, the receipts factor is deemed to be zero.

(403) **Throw-out income.** Throw-out income includes all apportionable receipts attributed to states where the taxpayer:

(a) Is not taxable (see subsection (106) of this rule); and

(b) At least part of the activity of the taxpayer related to the throw-out income is performed in Washington.

Example ((37)) 47. During 2019, XYZ Corp. performs all services in Washington and has apportionable receipts attributed using the criteria listed in subsections (301) through (305) of this rule or WAC 458-20-19403 as follows: Washington \$500,000; Idaho \$200,000; Oregon \$100,000; and California \$300,000. XYZ ((Corp.)) is subject to Oregon and Idaho corporate income tax, but does not owe any California business activities taxes. XYZ does not have any throw-out income because Oregon and Idaho impose a business activities tax on its activities and it is deemed to be taxable in California because it satisfies the minimum nexus standards for 2019 explained in WAC 458-20-19401 (more than \$250,000 in receipts). XYZ's receipts factor is: $500,000/1,100,000$ or 45.45%.

Example ((38)) 48. Same facts as Example ((37)) 47 except Idaho does not impose any tax on XYZ ((Corp.)). The \$200,000 attributed to Idaho is throw-out income that is excluded from the denominator because: XYZ ((Corp.)) is not subject to Idaho business activities taxes; does not have substantial nexus with Idaho under Washington standards; and performs in Washington at least part of the activities related to the receipts attributed to Idaho. The receipts factor is $500,000/900,000$ or 55.56%.

Example ((39)) 49. The same facts as Example ((38)) 48 except XYZ ((Corp.)) performs no activities in Washington related to the \$200,000 attributed to Idaho. In this situation, the \$200,000 is not throw-out income and remains in the denominator. The receipts factor is: $500,000/1,100,000$ or 45.45%.

PART 5. HOW TO DETERMINE WASHINGTON TAXABLE INCOME.

(501) **General.** Washington taxable income is determined by multiplying apportionable income by the receipts factor for each apportionable activity the taxpayer engages in. While the receipts factor is calculated without regard to deductions authorized under chapter 82.04 RCW, apportionable income is determined by reducing the apportionable receipts by amounts that are deductible under chapter 82.04 RCW regardless of where the deduction may be attributed. This formula can be expressed algebraically as:

$$\begin{array}{r} \text{(Taxable} \\ \text{Income)} \end{array} = \begin{array}{r} \text{(Receipts} \\ \text{Factor)} \end{array} \times \begin{array}{r} \text{(Apportionable} \\ \text{receipts} \\ \text{- Exemptions and} \\ \text{deductions)} \end{array}$$

Example ((40)) 50. Calculating apportionable income. Corporation A received \$2,000,000 in apportionable receipts from its worldwide apportionable activities, which included \$500,000 of receipts that are deductible under Washington law. Corporation A's total apportionable income is \$1,500,000 (\$2,000,000 minus \$500,000 of deductions). If Corporation A's receipts factor is 31.25%, then its taxable income is \$468,750 (\$1,500,000 multiplied by 0.3125).

PART 6. REPORTING INSTRUCTIONS.

(601) General.

(a) Taxpayers required to use this rule's apportionment method may report their taxable income based on their apportionable income for the reporting period multiplied by the receipts factor for the most recent calendar year the taxpayer has available.

(b) If a taxpayer does not calculate its taxable income using (a) of this subsection, the taxpayer must use actual current calendar year information.

(602) Reconciliation. Regardless of how a taxpayer reports its taxable income under subsection (601)(a) or (b) of this rule, ~~((when the))~~ a taxpayer ((has the information)) that has reportable apportionable income must file a reconciliation to determine the receipts factor for an entire calendar year((, it must file a)) by October 31st of the following year. If the date for filing falls on a Saturday, Sunday, or legal holiday, the reconciliation will be considered timely if filed on the next business day. The reconciliation filing must be on the department's annual reconciliation of apportionable income form. The reconciliation ((and)) may result in the taxpayer either ((obtain)) obtaining a refund or ((pay)) paying any additional tax due. ((The reconciliation must be filed on a form approved by the department.)) In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments. If the reconciliation is completed ((prior to)) and all additional tax has been paid by the October 31st ((of the following year)) due date, no penalties will apply to any additional tax that may be due.