

State Ruling

204-700, Interim Guidance Statement-- Sales and use-- Business and occupation tax constitutional limitations-- Apportionment-- Proportional attribution

¶204-700. Interim Guidance Statement, Washington Department of Revenue, December 20, 2021.

Sales and use: Business and occupation tax constitutional limitations: Apportionment: Proportional attribution.— For business and occupation (B&O) tax purposes, the Washington Department of Revenue has provided interim guidance on the impact of the Thurston County Superior Court's decision in *AT&T Services, Inc. v. Department of Revenue*, which invalidated the proportional attribution requirement in WAC 458-20-19402 for periods before June 12, 2014. A taxpayer may qualify for a refund if they used proportional attribution when calculating their receipts factor for periods before June 12, 2014, and the calculation resulted in an overpayment of taxes.

As no refund may be made for taxes paid more than four years before the beginning of the calendar year in which a refund application is made, some taxpayers may need to submit applications by December 31, 2021 if they believe they made an overpayment during calendar year 2017 for a pre-June 12, 2014 tax period.

Important!

Our services are available online and our call center agents are ready to assist by phone or chat. Our offices are open for in-person visits by appointment only (</contact-us/departament-revenue-offices-open-appointment-only>). Please visit our Contact page (</contact-us>) for other support options.

COVID-19 business relief (</business-relief-during-covid-19-pandemic>) is available. El alivio comercial de COVID-19 está disponible (</taxes-rates/espanol/alivio-para-los-negocios-durante-la-pandemia-de-covid-19>).

Interim guidance statement regarding AT&T Services, Inc. v. Department of Revenue

December 20, 2021

This interim guidance explains the effect of the Thurston County Superior Court's order in *AT&T Services, Inc. v. Department of Revenue*. This order invalidated portions of WAC 458-20-19402 (Rule 19402) for periods before June 12, 2014. The order does not impact Rule 19402 for periods on or after June 12, 2014.

Background

Washington adopted single factor receipts apportionment effective June 1, 2010. ^[1] Former RCW 82.04.462(3)(b) (2010) provided that, for purposes of calculating the receipts factor, gross income from apportionable activities is attributable to the state:

1. Where the customer received the benefit of the taxpayer's service or, in the case of gross income from royalties, where the customer used the taxpayer's intangible property.
2. If the customer received the benefit of the service or used the intangible property in more than one state, gross income of the business must be attributed to the state in which the benefit of the service was primarily received or in which the intangible property was primarily used. ^[2]

The Department adopted Rule 19402 interpreting this statutory language. Rule 19402 provided

guidance that under subsection (3)(b)(i) of the statute, if a taxpayer received the benefit of a service in multiple states and can reasonably determine the amount of apportionable receipts related to the benefit received in this state, such amount must be attributed to this state. This may be shown by applying a reasonable method of proportionally attributing the benefit among states (proportional attribution). Effective June 12, 2014, the legislature amended RCW 82.04.462(3)(b)(i) to explicitly allow for proportional attribution. ^[3]

Summary of *AT&T Services*

- *AT&T Services* challenged Rule 19402 in the Thurston County Superior Court, on the grounds that Rule 19402 exceeded the Department's authority for periods before the June 2014 statutory amendment. ^[4]
- On May 24, 2021, the court ordered that Rule 19402 is invalid to the extent it requires taxpayers to use proportional attribution for tax periods before June 12, 2014.
- The Department did not appeal the court's order in *AT&T Services*.

Effect of *AT&T Services*

As a result of the decision, taxpayers may qualify for a refund for taxes paid if:

- The taxpayer used proportional attribution, as instructed by Rule 19402, when calculating their receipts factor for periods before June 12, 2014, and
- This calculation resulted in overpayment of taxes for the relevant period(s).

No refund or credit may be made for taxes paid more than four years before the beginning of the calendar year in which a refund application is made, unless the taxpayer and Department have agreed to extend this time period. ^[5] **Note: As a result of this nonclaim period, it may be in some taxpayers' interests to submit refund applications by December 31, 2021, in situations where they believe they made an overpayment during calendar year 2017, for a pre-June 12, 2014 tax period. Failure to submit a timely refund application may bar a potential refund claim.**

Next steps

- The Department will review any refund requests implicating the *AT&T Services* decision and pre- June 12, 2014 tax periods on a case-by-case basis.
- The Department plans to issue an excise tax advisory (ETA) in early 2022. This ETA will further address the effect of the *AT&T Services* decision.

Applying for refunds

For more information, see [Apply for a tax refund \(/file-pay-taxes/apply-tax-refund\)](#).

Footnotes

^[1]	2ESSB 6143 §105 (chapter 23, Laws of 2010).
^[2]	The statute lists additional cascading steps that apply if the taxpayer is unable to attribute gross income under subsections (3)(b)(i)-(ii).

[3]	This amendment added the following language to subsection (3)(b)(i): "When a customer receives the benefit of the taxpayer's services or uses the taxpayer's intangible property 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 or intangible property used by the customer in this state can be reasonably determined by the taxpayer, such amount of gross income must be attributed to this state." The amendment also provided language specifying that subsection (3)(b)(ii) applies if the taxpayer is unable to attribute gross income under subsection (3)(b)(i).
[4]	AT&T Services filed its challenge under the Administrative Procedure Act. <i>See</i> chapter 34.05 RCW.
[5]	See RCW 82.32.060 and WAC 458-20-229.