

State Ruling

204-864, Tax Topics-- Sales and use-- Business and occupation tax specific businesses-- Royalty income-- Patent income

¶204-864. Tax Topics, Washington Department of Revenue, November 15, 2023.

Sales and use: Business and occupation tax specific businesses: Royalty income: Patent income.— Income from patent royalties and sales is subject to Washington business and occupation (B&O) tax when received as a regular part of business activities. Patent royalties earned by an inventor or received by an investment firm are taxable under the royalties tax classification. Income from a patent sale by an inventor is taxable under the service and other activities classification. A non-financial business that holds the rights to a patent for investment purposes is not subject to B&O tax.

Patent income may be taxable

Income received from patents may be subject to business and occupation (B&O) tax. The taxability of the income depends on whether the amounts are business or non-business income.

Business income

Income from patent royalties and patent sales is subject to B&O tax when received as a regular part of business activities. Three examples of taxable patent income include:

- Patent royalties earned by an inventor for the right to use a patented process or to manufacture a patented item. This income is taxable under the royalties B&O tax classification.
- Income from the sale of a patent by an inventor. This income is taxable under the service and other activities B&O tax classification.
- Patent royalties received by an investment firm that owns patents and other intangible assets for investment purposes. This income is taxable under the royalties B&O tax classification.

In these instances, the patent income is a regular part of the business operations because it is relied on to sustain the business.

Income subject to B&O tax under either the royalties or service and other activities classification is apportionable.

Non-business income

A non-financial business that holds the rights to a patent for strictly investment purposes is not subject to B&O tax on its patent income. A patent right held strictly for investment purposes occurs if the income is not committed to business purposes or used otherwise in a regular trade or business operation. An example of non-taxable patent income includes:

- Royalty income earned by a person who purchased the patent for pure speculation along with other investments. This person has no business operations related to the patent.

In the above example, the activity is casual in nature and the income is not regular and recurring. Consequently, such income is not subject to B&O tax.

References

WAC 458-20-19402 – Single factor receipts apportionment-Generally

WAC 458-20-19403 – Apportionable royalty receipts attribution

WAC 458-20-106 – Casual or isolated sales-Business reorganizations

RCW 82.04.2907 – Tax on royalties

ETA 3142.2009 – Business and Occupation Tax on Sale of or Granting a License to Use

Intangibles