

State Ruling

203-259, Tax Topics: Individual Fishing Quotas (IFQs)-- Business and occupation-- Specific businesses-- Fish processing and sales-- Individual fishing quotas

¶203-259. Tax Topics: Individual Fishing Quotas (IFQs), Washington Department of Revenue, March 30, 2011.

Business and occupation: Specific businesses: Fish processing and sales: Individual fishing quotas.— The Washington Department of Revenue has issued guidance concerning the business and occupation (B&O) tax treatment of individual fishing quotas (IFQs). IFQs are a type of "catch share," a means by which the U.S. government regulates fishing. They are defined under federal law as permits to harvest specific quantities of fish or shellfish. IFQs, as a permit held for exclusive use by a person, are intangible rights. The B&O tax treatment of IFQs depends on whether they are leased or sold.

If an IFQ is leased out so the lessor receives compensation for the use of the intangible property, the income is subject to B&O tax under the royalties classification. Effective June 1, 2010, Washington adopted an economic nexus standard for income reported under the royalties B&O tax classification and a single factor apportionment formula. Businesses that have apportionable royalty income from inside and outside of Washington may apportion their income based on the formula found in WAC 458-20-19403. Under this standard, the royalty income received from the lease of an IFQ would be attributed to the state where the IFQ is used by the lessee to harvest the fish or shellfish. Receipts from the lease of the IFQ would be attributed to Washington to the extent that IFQs are used in Washington by the lessee.

The income from an outright sale of IFQs is not a royalty because it is not for the use of the intangible asset. Therefore, the gross proceeds from the sale of IFQs would be considered a sale of an intangible asset subject to B&O tax under the service and other activities classification. Effective June 1, 2010, Washington also adopted an economic nexus standard for income reported under the service and other activities B&O tax classification and a single factor apportionment formula. Businesses that have income from inside and outside of Washington may apportion their income based on the formula found in WAC 458-20-19402. Under this standard, the income received from the sale of an IFQ would be attributed to the state where the IFQ benefits the owner, i.e., allows the owner to harvest the fish or shellfish. Receipts from the sale of the IFQ would be attributed to Washington to the extent that IFQs grant fishing rights in Washington.

Individual fishing quotas (IFQs)

Individual fishing quotas (IFQs) are a type of "catch share," a means by which the U.S. government regulates fishing. They are defined under the Magnuson Fishery Conservation and Management Act (16 U.S.C. §§ 1801-1884) as permits to harvest specific quantities of fish or shellfish. IFQs, as a permit held for exclusive use by a person, are intangible rights. As such, there are two different business and occupation (B&O) tax treatments if the IFQs are either: (1) leased or (2) sold.

Lease of IFQs

If an IFQ is leased out so the lessor receives compensation for the use of the intangible property, this income is subject to the B&O tax under the *royalties* classification.

The income from the lease of an IFQ is not compensation for the sale of the actual fish, but is instead compensation for granting the right to fish and retain a specific share of the total allowable catches. A person may lease an IFQ and not be successful in actually catching any fish. Further, when an IFQ is leased, no fish are received in the transaction. Instead, what is received is a permit or right to fish in a specified area and to harvest a certain quantity of fish.

Effective June 1, 2010, Washington State adopted an economic nexus standard for income

reported under the Royalties B&O tax classification and a single factor apportionment formula. Businesses that have apportionable royalty income from inside and outside of Washington may apportion their income based on the new formula found in WAC 458-20-19403. Under this standard, the royalty income received from the lease of an IFQ would be attributed to the state where the IFQ is used by the lessee to harvest the fish or shellfish. Receipts from the lease of the IFQ would be attributed to Washington to the extent that IFQs are used in Washington by the lessee. For example, an IFQ that allowed for 10% of its use inside Washington's territorial waters and 90% outside Washington's territorial waters would result in 10% of the lease payment attributed to Washington (see WAC 458-20-19403 for further details). For more information, see our webpage on Economic Nexus.

Prior to June 1, 2010, the royalty income received from the lease of an IFQ would be subject to Washington's B&O tax if the lessor was commercially domiciled (i.e. where the business of the lessor is actually managed and functioning) in Washington.

Sale of IFQs

The income from an outright sale of IFQs is not a royalty because it is not for the use of the intangible asset. Therefore, the gross proceeds from the sale of IFQs would be considered a sale of an intangible asset subject to the B&O tax under the *service and other activities* classification.

Effective June 1, 2010, Washington State also adopted an economic nexus standard for income reported under the service and other activities B&O tax classification and a single factor apportionment formula. Businesses that have income from inside and outside of Washington may apportion their income based on the new formula found in WAC 458-20-19402. Under this standard, the income received from the sale of an IFQ would be attributed to the state where the IFQ benefits the owner, allowing him to harvest the fish or shellfish. Receipts from the sale of the IFQ would be attributed to Washington to the extent that IFQs grant fishing rights in Washington. For example, an IFQ that allowed for 10% of its beneficial use inside Washington's territorial waters and 90% outside Washington's territorial waters would result in 10% of the purchase price attributed to Washington (see WAC 458-20-19402 for further details). For more information, see our webpage on Economic Nexus.

Prior to June 1, 2010, a business that earned income from the sale of an IFQ must apportion that income under Washington Administrative Code (WAC) 458-20-194.