

State Ruling

204-240, Tax Topics: Interim Statement Regarding the Attribution of Receipts from Apportionable Staff Augmentation-- Business and occupation tax-- Business and occupation tax specific businesses-- Services and other business activities-- Staff augmentation service provider

¶204-240. Tax Topics: Interim Statement Regarding the Attribution of Receipts from Apportionable Staff Augmentation, Washington Department of Revenue, June 22, 2017.

Business and occupation tax: Business and occupation tax specific businesses: Services and other business activities: Staff augmentation service provider.— For business and occupation tax purposes, the Washington Department of Revenue has issued an interim guidance informing taxpayers about how to attribute receipts earned from supplying personnel to customers (staff augmentation). A service provider is considered to be providing a staff augmentation service if it is not responsible for achieving any particular milestones or producing any particular work product for its customer and the service is only related to supplementing a customer's labor force. The customer generally receives the "benefit of the service" at the location from where it controls the daily work of the supplied staff, and the staff augmentation service provider is required to attribute its receipts to that location or locations because the Department presumes the location of the supplemental staff as the location from where the customer controls the staff unless a circumstance indicates otherwise. While the type of service supplied by a taxpayer is required to be staff augmentation, the type of work the supplied staff performs for a customer does not affect where the taxpayer should attribute the receipts it earns from such service. The interim guidance provides further information pertaining to the relevant attribution rules and the method for applying these rules to staff augmentation services, along with relevant examples.

Interim Statement Regarding the Attribution of Receipts from Apportionable Staff Augmentation

June 22, 2017

Introduction

The Department of Revenue is issuing this interim guidance statement to explain how to attribute receipts a taxpayer earns from supplying personnel to customers ("staff augmentation").¹ The customers in these situations generally use the personnel to supplement existing staff. They usually require only that the additional staff meet certain experience, skills, or education qualifications.

Issue

For apportionment purposes, to what location(s) should a service provider (e.g. staffing company) attribute its receipts from providing apportionable (i.e. non-retail) staff augmentation services?

Answer

A service provider is providing a staff augmentation service if it is not responsible for achieving any particular milestones or producing any particular work product for its customer. In this respect, the service is supplementing a customer's labor force.

The customer generally receives the "benefit of the service" at the location from where it controls the daily work of the supplied staff. The staff augmentation service provider should attribute its receipts to that location or locations. The Department presumes the location of the supplemental staff is also the location from where the customer controls the staff unless the circumstances

indicate otherwise.

Background

A common question pertaining to staff augmentation services is whether the type of work the supplied staff performs for the customer affects where the taxpayer should attribute the receipts it earns from the staffing service. The short answer is no. The type of “service” supplied by the taxpayer is providing a supplemental labor force or “staff augmentation.”

General attribution rules

A service provider earning apportionable income that is taxable in Washington as well as in another state must apportion the income to determine the amount taxable in Washington for B&O tax purposes.² The process of apportioning income typically requires attributing the receipts the service provider earns from each apportionable activity to the location(s) where the service provider's customer received the benefit of the service.³

Relevant Attribution Rules

The approach for determining the location(s) where the customer received the benefit of the taxpayer's service varies depending on the service provided by the taxpayer. WAC 458-20-19402 (“Rule 19402”) provides specific rules for determining where the benefit is received, including the following:

- If the taxpayer's service relates to real property, then the benefit is received where the real property is located.⁴
- If the taxpayer's service relates to tangible personal property (“TPP”), then the benefit is received where the TPP is located or intended/expected to be located.⁵
- If the taxpayer's service does not relate to real property or TPP, but does relate to its customer's business activities, then the benefit of the taxpayer's service is received at the location(s) where the customer's related business activities occur.⁶

Applying the above attribution rules requires answering several questions:

1. What service is the taxpayer providing?
2. Does that service relate to real or tangible personal property? If so, where is that property located or intended/expected to be located?
3. If the service does not relate to real or tangible personal property, but relates to a business activity carried on by the customer, what is the customer's related business activity and where does that related business activity of the customer occur?

To identify the service the taxpayer is providing for the above analysis, the Department examines the scope of the taxpayer's work, particularly its responsibilities to its customer.

Applying the attribution rules to staff augmentation services

Step 1: Identify the Service Taxpayer is Providing

If the taxpayer is only responsible for providing individuals to perform work for the client but is not responsible for achieving any particular milestones or producing any particular work product for the customer, the taxpayer is only supplementing its customer's workforce with the taxpayer's own staff. In this circumstance, the taxpayer is providing a *staff augmentation service* because the taxpayer has no deliverables to the customer separate from providing workers to supplement the customer's workforce.

If a taxpayer is providing a staff augmentation service, it is not providing a service that relates to

real or tangible personal property. Therefore, the next step in the attribution analysis is to identify the business activity of the customer that relates to the taxpayer's staff augmentation service.

Step 2: Identify the Related Customer Business Activity

In staff augmentation situations, the taxpayer lacks specific work product responsibilities or milestones other than supplying individuals that have certain skills desired by the customer. This service directly relates to the customer's human resources staffing function. Staff augmentation essentially replaces much of the traditional hiring and training process a customer would otherwise be required to do. Accordingly, for purposes of the attribution analysis in Rule 19403(303)(c), the customer's business activity that relates most closely to a staff augmentation service is human resources/staffing.

Step 3: Identify the Location(s) Where the Related Customer Business Activity Occurs

We identify the location(s) where the related human resources activity of the customer occurs by determining the location(s) where the customer fully integrates and controls the supplied staff. This location(s) is presumed to be the location(s) where the supplied staff performs work for the customer. Accordingly, a taxpayer should attribute its receipts from providing staff augmentation services to the location(s) where the supplied staff is physically located unless the circumstances indicate that the customer controls the supplemental staff from a different location.

Examples

Example 1

Software Developer is developing a software product that it plans to sell directly to consumers at retail. Staffing Service entered into a contract with Software Developer pursuant to which Staffing Service will provide certain skilled workers to Software Developer's product development team. The contract provides job descriptions and Staffing Service is responsible for providing qualified individuals.

The amount of compensation Software Developer will pay to Staffing Service is determined by the number of hours and type of work performed by Staffing Service's employees. Staffing Service's compensation is not dependent on the completion of any product development milestones or particular work product. Staffing Service's employees will work both on and off a Software Developer worksite. One Software Developer employee located in Seattle will control the day-to-day work performed by Staffing Service.

These facts indicate that Staffing Service is not responsible for the completion of any specific product development tasks or milestones. Instead, Staffing Service is providing the Software Developer support staff in order to augment its customer's workforce. Staffing Service should attribute its receipts from these staff augmentation services to Seattle; i.e., the location from where Software Developer controls Staffing Service's personnel on a day-to-day basis.

Example 2

Law Firm represents a State X client in a large products liability lawsuit against a company headquartered in Washington. Law Firm does not have enough attorneys to review all of the thousands of documents it discovered to be relevant to the dispute. Consequently, Law Firm hires Staffing Service to supply attorneys who Law Firm will use to perform document review tasks. The supplemental lawyers will perform all of their work at a Law Firm office located in Seattle. Staffing Service's responsibilities in this matter are limited to providing lawyers who have the skills necessary to perform the work. Staffing Service is not responsible for any milestones or specific work product. Accordingly, Staffing Service is performing a staff augmentation service.

Law Firm will make day-to-day decisions over the Staffing Service lawyers' work at its Seattle office. For example, Law Firm attorneys in Seattle will assign specific tasks to the Staffing Service

lawyers, review the work performed by the lawyers, and determine how many hours a particular lawyer will work per week. In contrast, decisions about whether to add or release supplemental attorneys will be made in San Francisco, at the Law Firm office managing the lawsuit.

Under these circumstances, Staffing Service should attribute its receipts from Law Firm to Washington because Law Firm controls the supplemental staff from that location.

Example 3

Software Developer hires Designer, a Portland, Oregon-based design firm, to design a logo for the software product in development. Under its contract with Software Developer, Designer must perform market research and create a logo prototype and deliver the work product to Software Developer for further in-house development. Software Developer will review and incorporate the logo into the software product from its office in Seattle. Failure by Designer to deliver its market research findings, a logo prototype, and all underlying intellectual property rights in the prototype by a specified date will result in Designer being in breach of the contract. The contract pays Designer a flat fee.

Designer is *not* providing a staff augmentation service under these circumstances. Rather than supplementing Software Developer's workforce, Designer is tasked with producing specific work product with milestones. Designer is performing a design service. However, the facts suggest that the business activity of Software Developer that mostly closely relates to Designer's design services is Software Developer's own additional development and design activity, which involves reviewing the logo prototype and incorporating it into the software product. Because Software Developer's related business activity occurs in Seattle, Designer's receipts from this service should be attributed to Washington.⁷

Footnotes

¹	This guidance does not apply to a staffing service that falls under a non-apportionable B&O tax classification. See WAC 458-20-274 for additional information.
²	RCW 82.04.460(1).
³	RCW 82.04.462(3)(b)(i).
⁴	Rule 19402(303)(a).
⁵	Rule 19402(303)(b).
⁶	Rule 19402(303)(c).
⁷	See DOR Interim Guidance on Attribution of R&D Services for additional guidance on attributing income from R&D services.