

Investments

On October 24, 2024 the Washington Supreme Court issued a decision in the Antio, LLC v. Wash. State Dep't of Revenue (Antio) case. This decision addresses the taxability of investments.

The decision impacts the department's guidance on investments discussed in this article. The department is reviewing the decision and will provide updated guidance after further analysis. In the meantime, if you have questions regarding the taxability of investments, please request a ruling.

Gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest income, dividends, and other investment related income are included in the term "gross income of the business" without any deduction for losses (RCW 82.04.080).

Deduction for amounts derived from incidental investments

A B&O tax deduction is provided for amounts derived from incidental investments (RCW 82.04.4281).

The Washington Supreme Court recently held in *Antio* that this deduction is limited to income that is earned through investments that are incidental to the main purpose of the taxpayer's business. This means that a taxpayer cannot deduct investment income if the investment activity generating the income is the main business activity of the taxpayer. The department will presume that an investment activity is not the main activity of a taxpayer if it generated less than 5% of the taxpayer's annual gross receipts. This constitutes a safe harbor.

Taxpayers have the burden of proving an investment activity is not the main business activity if the income from the activity exceeds the safe harbor. Therefore, a taxpayer with investment activity income that falls outside of the safe harbor must establish that the income was generated from an incidental

investment of the taxpayer's surplus funds. In this regard, in determining whether investment activity is incidental, a taxpayer's facts and circumstances at and prior to the time of filing will be relevant.

Also, this deduction does not generally apply to amounts received from loans, the extension of credit, revolving credit arrangements, installment sales, and similar interest income.

The department encourages taxpayers with questions about their specific situation to contact the department for further guidance.

Endowments

Investment income from a bona fide endowment fund is fully deductible under a separate statute, RCW 82.04.4282. Both beneficiaries and holders of endowment funds may deduct investment income if they can show that the endowment fund is the source of the deducted income.

Persons not engaging in business

Persons who are not engaging in business are not subject to B&O tax on their income earned from investing. This category includes individuals who are not engaged in business and who invest their own personal assets.

The department is also considering providing additional guidance on what activities constitute engaging in business in Washington, and in this context how mutual funds, private investment funds, trusts (including family trusts), and other collective investment vehicles respectively are treated for tax purposes. The department is currently reviewing stakeholder requests for guidance on this issue, and is evaluating what, if any, guidance is appropriate.

Apportionment of non-deductible investment income

The specific attribution method that applies to non-deductible investment income is a fact-dependent determination. While this section provides a general overview, the department is working to provide further guidance on the apportionment of investment income for non-financial institutions.

Non-deductible investment income is subject to the service & other activities B&O tax classification. Gross income from service and other activities is apportionable, which means a taxpayer who is subject to an income tax or gross receipts tax in Washington and at least one other state must calculate

their Washington income by multiplying their apportionable income by the receipts factor. See RCW 82.04.462 and WAC 458-20-19402. Information about apportionment and the Washington receipts factor is also available at the "Apportionment" page of the department's website.

A necessary step in the receipts factor calculation involves determining what portion of investment income is attributed to Washington. Receipts are generally attributed to where the taxpayer's customer receives the benefit of the taxpayer's service. RCW 82.04.462(3)(b)(i), WAC 458-20-19402(301)(a). However, if the taxpayer is unable to attribute receipts based on where the benefit of the service is received, they must instead attribute receipts from investment income using one of the steps in WAC 458-20-19402(301)(b)-(g). See also RCW 82.04.462(3)(b)(ii)-(vii).

Deduction not available for banking business, lending business, or security business

The deduction for amounts derived from incidental investments is not available to a banking business, lending business, or security business.

For this purpose, a security business is defined as a business, other than an issuer, in the business of effecting transactions in securities as a broker, dealer, or broker-dealer, as defined in the Securities Act of Washington (Chapter 21.20 RCW) or the federal Securities Act of 1933.

Generally, these laws require a broker, dealer, or broker-dealer to register with the Washington Department of Financial Institutions and/or the Securities and Exchange Commission.

A person who buys and sells securities for his or her own account, either individually or in a fiduciary capacity rather than as part of a regular business, is generally considered a trader rather than a dealer, broker, or broker-dealer, and not considered a security business. According to the SEC's Guide to Broker Dealer Registration [↗](#), the following characteristics are indicative of a dealer rather than a trader:

- Advertising or otherwise letting others know that the person is in the business of buying and selling securities.
- Doing business with the public (either retail or institutional).
- Making a market in or quoting prices for the purchase and sale of one or more securities.

- Participating in a selling group or otherwise underwriting securities.
- Providing services to investors, such as handling money and securities, extending credit, or giving investment advice.
- Writing derivatives contracts that are securities.

The frequency of trading activity alone is not determinative if the other characteristics of the investing activity indicate the trading is not part of a regular business. A trader not meeting the characteristics of a broker, dealer, or broker-dealer is not a security business.

Gross income of stockbrokers, security houses, banks, and other financial institutions

How gross income is calculated depends on the type of institution.

Stockbrokers and security houses: computed following WAC 458-20-162.

Stockbrokers and security houses are not allowed a deduction for income derived from investments. Gross income includes amounts from interest, commissions, trading, dividends, and other sources. Gross income from trading is the amount received from the sale of stocks, bonds, and other securities over and above the cost or purchase price of such stocks, bonds and other securities.

Banks and other financial institutions: computed following WAC 458-20-146.

Since banking and lending businesses are also not allowed the deduction for income derived from investments, gross income includes gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other similar emoluments.

Compensation for rendition of services not derived from investments

Gross income from rendering services, such as investment advisory services, is generally subject to service and other activities B&O tax. This income is not deductible under RCW 82.04.4281, since it is derived from services rather than from investments.

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