

State Ruling

204-220, Special Notice-- Business and occupation-- Business and occupation tax specific businesses-- Services and other business activities-- Corporate director fees

¶204-220. Special Notice, Washington Department of Revenue, May 24, 2017.

Business and occupation: Business and occupation tax specific businesses: Services and other business activities: Corporate director fees.— All compensation received in any form for services rendered as a corporate director, including the reimbursement of expenses, is subject to Washington business and occupation (B&O) tax under the service and other activities classification. The following are director fees subject to B&O tax: (1) all compensation received in any form for services rendered as a corporate director including, but not limited to, fees, the value of stock options or property received in exchange for services, awards, and bonuses; and (2) all amounts recovered for expenses incurred in connection with such services including, but not limited to, telephone costs, preparation fees for meetings, and travel expenses.

a corporate director may owe B&O tax on director fees if the director has substantial nexus with Washington. A corporate director is deemed to have substantial nexus with Washington if the director is (1) a resident or domiciliary of the state; or (2) a nonresident of the state and in any tax year has (i) more than \$53,000 of property in the state, (ii) more than \$53,000 of payroll in the state, (iii) more than \$267,000 of receipts from the state, or (iv) at least 25% of his or her total property, total payroll, or total receipts in the state. Corporate directors who are taxable on their director fees in Washington and another state may be entitled to report their taxable income on an apportioned basis.

Special Notice

WASHINGTON STATE DEPARTMENT OF REVENUE

May 24, 2017

Director fees subject to Business and Occupation (B&O) tax

All compensation received, in any form, for services rendered as a corporate director, including the reimbursement of expenses, is subject to Washington State B&O tax under the Service and Other Activities classification.

- Corporate directors, while acting in that capacity, are not considered employees of the corporation whose board they serve on; and
- Amounts received by an individual from a corporation for serving as a member of that corporation's board of directors (director fees) are subject to the B&O tax effective July 1, 2010.

Directors fees subject to B&O tax

- All compensation received, in any form, for services rendered as a corporate director including, but not limited to, fees, the value of stock options or property received in exchange for services, awards, and bonuses; and
- All amounts recovered for expenses incurred in connection with such services including, but not limited to, telephone costs, preparation fees for meetings, and travel expenses.

In most cases, director fees must be included on an official IRS Form 1099-MISC. The department will generally accept amounts shown on the IRS form 1099 as the amount subject to tax (WAC) 458-20-138.

Where a corporate director is also an employee of a corporation, only the nonemployee director fees received for services rendered as a corporate director are subject to B&O tax: income

earned as an employee is exempt from the B&O tax under RCW 82.04.360.

Stock options

Director fees include the value of stock options granted as compensation (compensatory stock options) to the extent that amount should be reported on the official IRS Form 1099-MISC.

Corporate directors are not subject to the B&O tax on the value of compensatory stock options that were granted prior to the effective date of the legislation (July 1, 2010).

Please note that all taxpayers are required to keep suitable records, including copies of all federal income tax and state tax returns, as may be necessary to determine the amount of any tax. See RCW 82.32.070. For information on accounting methods see WAC 458-20-199. For information on the timing of tax liability see WAC 458-20-197.

Determining nexus

You may owe B&O tax on your director fees if you have a substantial nexus with this state.

Substantial Nexus

A corporate director is deemed to have substantial nexus with this state if the director is a resident or domiciliary of this state or a nonresident of this state and in any tax year meets one of the thresholds defined in Excise Tax Advisory (ETA) 3195.2016.

Note: The economic nexus thresholds may be adjusted each year. Please refer to the ETA to determine current thresholds.

Apportioning director fees

Corporate directors who are taxable on their director fees in Washington and another state may be entitled to report their taxable income for B&O tax purposes on an apportioned basis. A corporate director is taxable in another state if:

- He or she is subject to tax in another state on his or her director fee income; or
- Another state has jurisdiction to tax that corporate director's income under the same substantial nexus standards, whether or not that state actually imposes a tax.

In general, corporate directors entitled to apportion their director fee income will be taxable on that portion of their director fee income received from corporations headquartered in this state. However, corporate directors could be liable for B&O tax on director fees received from corporations headquartered out-of-state if:

- the director performs at least some of the activity of a corporate director for the out-of-state corporation within this state and
- is not taxable on the director fees in the other state. See WAC 458-20-19402 for details on apportionment.

Registering

Corporate directors are not required to register with the department if all of the following apply:

- Your gross income from all activities subject to B&O tax is less than \$12,000 per year,
- You are not required to collect or pay to the department any other tax or fee administered by the department, and
- You are not otherwise required to obtain a license or registration from another Washington agency.

To register, complete a Business License Application with Business Licensing. Go to DOR's web site at bls.dor.wa.gov and click on Get a Washington State business license. This one form will register your business with the Department of Revenue, and other state agencies. Once

processed, you're receive a nine-digit Unified Business Identifier (UBI)/Tax Registration Number.

Reporting your tax

You must report amounts received as director fees on excise tax returns under the Service and Other Activities classification. You may be eligible to claim a small business B&O tax credit of up to \$70 per month against the amount of B&O tax due. For additional information on the small business tax credit, refer to the Special Notice published on April 28, 2010. The department is in the process of amending WAC 458-20-104 to incorporate changes to the small business credit.

Corporations reporting tax

The department may allow corporations to agree to report and pay taxes on behalf of their registered directors. However, corporation participation is voluntary. Corporate directors remain responsible for the timely and accurate filing of tax returns and payment of all applicable taxes. This is the case even when the corporation on whose board the director serves has been authorized by the department to file returns and pay taxes on behalf of their directors. For more information, you may contact our Taxpayer Account Administration Division (TAA) at (360) 902-7151.

Filing your tax return

Once you have registered with us, we'll send you a packet of information that includes a letter with your:

- UBI/tax registration number, and
- Filing frequency (monthly, quarterly, or annual).

Depending on your gross income, you may be required to report your excise taxes on a monthly, quarterly, or annual basis. We prefer you to electronically file (e-file) your tax return. E-file calculates the tax, checks for accuracy, and flags potential errors before you file. The e-file program also automatically calculates the small business B&O tax credit for e-filers. You can file taxes electronically by setting up a secure account at dor.wa.gov.

Background

Washington State's B&O tax is intended to tax virtually all business activities carried on within the state. This happens unless a specific exemption applies. One such exemption is for income earned as an employee (RCW 82.04.360). Under the Washington Business Corporation Act, Title 23B RCW, an "employee" includes an officer, but not a director, of a corporation; however, a corporate director may accept duties that make the director also an employee of the corporation (RCW 23B.01.400(11)).

Questions?

- Visit our website at dor.wa.gov
- Email dorcommunications@dor.wa.gov
- Call our Telephone Information Center at 1-800-647-7706.

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