

State Ruling

## **203-203, Special Notice-- Business and occupation-- Constitutional limitations-- Nexus-- Economic nexus**

¶203-203. Special Notice, Washington Department of Revenue, October 8, 2010.

**Business and occupation: Constitutional limitations: Nexus: Economic nexus.**-- Under the Washington economic nexus standard that went into effect on June 1, 2010, fees received by securities brokers/dealers and fund managers can become subject to business and occupation (B&O) tax on an apportioned basis. The economic nexus standard may be met without a physical presence in Washington. An out-of-state business receiving fees attributable to Washington will have nexus with Washington if in a tax year it has at least one of the following in Washington: commercial domicile; property with an average value exceeding \$50,000; payroll exceeding \$50,000 (including certain third-party costs); sales (fees) exceeding \$250,000; or at least 25% of its worldwide property, payroll, or sales.

### **Special Notice**

#### **WASHINGTON STATE DEPARTMENT OF REVENUE**

**OCTOBER 8, 2010**

**P.O. BOX 47478 | OLYMPIA, WASHINGTON 98504-7478 | 1-800-647-7706 | [HTTP://DOR.WA.GOV](http://DOR.WA.GOV)**

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### **New Economic Nexus in Washington State Applies to Securities Brokers / Dealers and Fund Managers**

#### **Background**

On June 1, 2010, Second Engrossed Substitute Senate Bill 6143 (2ESSB 6143), Chapter 23 Laws of 2010 (Part I) went into effect establishing Washington State's new economic nexus standard. Businesses meeting the new economic nexus standard (described below) are required to obtain a Washington tax registration and begin paying business and occupation (B&O) tax on their income attributable to Washington State.

#### **New Legislation**

The economic nexus standard may be met without a physical presence in Washington. Under the new economic nexus standard, fees earned that are attributable to Washington could become subject to Washington's B&O tax.

#### **Economic nexus taxable thresholds**

Under this new standard, an out-of-state business receiving fees attributed to Washington has nexus with Washington State if it has at least one of the following in, or attributable to, Washington State in a tax year:

- It is commercially domiciled in Washington;
- Property - average value exceeding \$50,000,
- Payroll exceeding \$50,000 (including certain third-party costs),
- Sales (fees) exceeding \$250,000, or
- At least 25% of its worldwide property, payroll, or sales.

See WAC 458-20-19401 for detailed discussion of the new economic nexus thresholds. **Note:** For

purposes of calculating the property, payroll, and sales thresholds for the 2010 tax year, the entire 2010 calendar year must be used. Starting June 1, 2010, a business will incur B&O tax on fees attributable to Washington only if it establishes nexus with Washington under the new economic nexus standards in 2ESSB 6143. For example, Taxpayer X is an out-of-state business with no physical presence in Washington. In 2010, Taxpayer X has \$100,000 of fee income attributable to Washington in May, \$100,000 in June, and \$100,000 in July. Taxpayer X establishes nexus with Washington by exceeding the \$250,000 sales (income) threshold and will owe B&O tax only on its Washington sales after June 1, 2010.

## **Definitions**

- Property - real property, personal property, rented property, intangible property, and receivables. It does not include computer software, digital goods, or digital codes. Generally, the average value of property is determined by averaging the value of property on January 1 and on December 31.
- Payroll - compensation paid to employees and third-party representatives providing services in Washington.
- Sales - interest, fees, gains from trading securities, dividends, commissions, royalties, and other income. Note: Generally, royalty income is attributed to Washington if the intangible is used in Washington. Complete information on sourcing of royalty income is available in WAC 458-20-19403.

## **“Trailing” nexus**

Once nexus has been established, it will continue for every year in which the taxpayer meets any of the thresholds and the following calendar year.

## **Registering in Washington**

Businesses with nexus under the new standard can obtain a Washington tax registration number and begin reporting B&O tax by visiting our website at: dor.wa.gov/EconomicNexus.

## **New apportionment methodology**

This legislation also provides for a new single-factor apportionment methodology based on sales. The new apportionment calculation is discussed in detail in Department rules and/or other publications that are available on the Department's website at: dor.wa.gov/EconomicNexus. Specifically, WAC 458-20-19402 addresses the apportionment of income except for royalty income and income of financial institutions. We advise you to join our email listserv via the website to be apprised of updated information.

## **For more information**

Visit the Department's website at dor.wa.gov/EconomicNexus or contact the Department's Telephone Information Center at 1-800-647-7706.