

## State Ruling

# **204-242, Tax Topics: Interim Statement Regarding the Attribution of Internet Advertising Receipts-- Business and occupation tax--Business and occupation tax specific businesses-- Publishing and printing-- Internet advertising receipts**

¶204-242. Tax Topics: Interim Statement Regarding the Attribution of Internet Advertising Receipts, Washington Department of Revenue, June 22, 2017.

### **Business and occupation tax: Business and occupation tax specific businesses:**

**Publishing and printing: Internet advertising receipts.**— The Washington Department of Revenue has issued an interim guidance statement to address how service providers should attribute receipts earned from providing internet advertising services for determining the taxable amount for business and occupation tax purposes. Generally, if a taxpayer's service relates to a business activity of its customer and not to real or tangible personal property, then the customer receives the benefit of the taxpayer's service at the location where the customer's related business activity occurs. However, in the case of an advertising service, the customer's related business activity is generally selling, and, consequently, the advertising service provider's receipts are attributed to the location where the customer conducts its selling activity which is where it delivers its products or services to the purchasers. The interim statement provides detailed information regarding the determination of where the location of the customer's related business activity occurs, and receipts attribution for national, regional as well as other states advertising.

## **Interim Statement Regarding the Attribution of Internet Advertising Receipts**

**June 22, 2017**

### **Introduction**

The Department of Revenue is issuing this interim guidance statement to address how service providers should attribute receipts earned from providing internet advertising services under RCW 82.04.462 and WAC 458-20-19402 ("Rule 19402").

### **General rule**

Gross income from an apportionable activity is typically attributable to the state where the taxpayer's customer received the benefit of the taxpayer's service <sup>1</sup>. If the taxpayer's service relates to a business activity of its customer and not to real or tangible personal property, then the customer receives the benefit of the taxpayer's service at the location(s) where the customer's related business activity occurs <sup>2</sup>. In the case of an advertising service, the customer's related business activity is generally selling, and, consequently, the advertising service provider's receipts are attributed to the location(s) where the customer conducts its selling activity (i.e., where it delivers products or services to purchasers). <sup>3</sup>

### **Determining where the customer's related business activity occurs**

*Specific information is available:* If an advertising service provider has specific information regarding where the customer's related business activity occurs, the provider must use that information for receipts attribution purposes. <sup>4</sup>

*A reasonable proportional method:* In the absence of specific information, the advertising service provider may use a reasonable proportional method that is "uniform, consistent, and accurately reflects the market, and does not distort the taxpayer's market" to determine where the customer receives the benefit of the service. <sup>5</sup> In the case of national internet advertising services, the

Department will accept Federal Communications Commission (“FCC”) internet access statistics to proportionally attribute the receipts from the services (see “FCC data” section below), assuming this approach is not otherwise distortive under the circumstances.<sup>6</sup>

### **Receipts attribution for national advertising**

For advertising targeting the entire United States, multiply the FCC data percentage described below (see “FCC data” section) by the advertising service provider’s total national advertising receipts.<sup>7</sup> The resulting number is the service provider’s Washington attributable receipts. This number is also the numerator of the service provider’s receipts factor for its advertising service activity.<sup>8</sup>

### **Receipts attribution for regional advertising**

In some cases, an advertising service only targets a region, such as the “Northwest,” because, for example, the client’s stores are only located in the Northwest and the client does not make remote sales. A reasonable method for proportionally attributing the advertising service provider’s receipts needs to reflect where the client’s related activity - selling - occurs. In this case, an attribution method using national FCC data would not be a reasonable proportional method because it does not reflect the client’s selling locations. An acceptable reasonable proportional method in this scenario would be to use a ratio of the client’s Washington stores to the client’s total regional stores (e.g., stores in OR, ID, WA and MT), assuming the stores are approximately the same size. The service provider would multiply its advertising receipts from the client by this ratio to yield the Washington-attributable receipts the service provider should include in the numerator of its receipts factor calculation.<sup>9</sup>

### **FCC Data**

An internet advertising service provider should use *FCC data* on internet access for proportionally attributing receipts when specific data is not available and there is no better data reasonably available. The FCC publishes internet access statistics generally covering six-month periods.<sup>10</sup> The chart provided below lists the internet connections in Washington as a percentage of the internet connections throughout the country, excluding U.S. territories.<sup>11</sup> The figures, in general, are averages of internet connections during the two six-month spans reported by the FCC for each of the last four years.

Washington Percentage of Total US Internet Connections			
2013	2014 <sup>12</sup>	2015	2016
2.297%	2.337%	2.361%	2.371%

<sup>12</sup> For 2014, the FCC reported one full-year figure rather than two six-month figures.

In general, internet advertising service providers should use the most up-to-date FCC data to proportionally attribute internet advertising receipts and update apportionment calculations on reconciliation forms when necessary.<sup>13</sup> For example, if only one six-month figure is available for a particular year, use that number to determine the percentage of receipts to proportionally attribute to Washington for that year. If the FCC updates the internet connections figures prior to the date the service provider remits its reconciliation form, the reconciliation form should use a receipts factor based on the updated FCC numbers. For example, if the FCC releases updated 2016 data on internet usage prior to the date an internet advertising service provider remits its reconciliation form, the service provider should prepare the reconciliation form using the updated 2016 data. Internet advertising service providers may use this data for attributing national advertising services. They may not use this approach if the advertising is regional, as discussed

above.

### **Receipts attribution to other states**

In determining the receipts factor, the attribution of receipts to other states should follow the same process as described above. If FCC data is used, the internet advertising service provider will need to calculate the appropriate percentage for each state. The percentages above are only for Washington.

### **Due diligence**

If an internet advertising service provider acquires specific information that allows the provider to more accurately attribute its internet advertising receipts, the provider must use that information rather than the reasonable proportional method described in this document. Example: Company A earns receipts from providing internet advertising services for a customer that sells products online and delivers them nationwide. Company A began using the reasonable proportional method described in this document on July 1, 2017, because Company A did not have access to specific information regarding where its customer's related business activity (i.e., selling) occurs. However, on January 1, 2018, Company A acquired access to internet protocol ("IP") address reports that accurately show where the customer's selling activity occurs and, therefore, where the customer received the benefit of the advertising services. ABC should use the IP address reports for reporting periods beginning January 1, 2018.

### **Example 1 using specific information**

Company B provides internet advertising services to Company C, which sells products online and delivers them nationwide. Company B has IP address data tying Company C's sales to physical locations inside and outside Washington. Company B should multiply the percentage of Washington sales by its gross receipts from the advertising services and include that number in the numerator for the purposes of determining the receipts factor under WAC 458-20-19402(402).

### **Example 2 using a reasonable proportional method**

Company X provides internet advertising services to Company Y, which sells products online and delivers them nationwide. Company X is paid for its services based on "clicks" from search engines and other links. Company X does not have specific data on the locations of Company Y's sales (e.g. user click data). Company X may use a reasonable proportional method of attributing its receipts. Company X should multiply its gross receipts from advertising by the Washington percentage of internet connections, as determined by the FCC data, and include the resulting number in the numerator for the purposes of determining the receipts factor under WAC 458-20-19402(402).

### **International advertising receipts**

This guidance does not address attribution of receipts from international advertising services.

### **Footnotes**

<a href="#">1</a>	RCW 82.04.462(3)(b)(i).
<a href="#">2</a>	Rule 19402(303)(c).
<a href="#">3</a>	See Rule 19402(304)(c), Examples 22 and 23.
<a href="#">4</a>	See RCW 82.04.462(3)(b)(i); Rule 19402(301)(a)(i), first sentence.
<a href="#">5</a>	See Rule 19402(301)(a)(i), (106)(f).

	<p><sup>6</sup> With respect to national internet advertising services, national internet usage statistics are used here as a proxy for the "relative population in the customer's market" described in Rule 19402 Example 22.</p>
	<p><sup>7</sup> If facts and circumstances indicate that the advertising is not national in scope, then the FCC data approach described here is not applicable. See Rule 19402(302) ("The tax results of all situations must be determined after a review of all the facts and circumstances.")</p>
	<p><sup>8</sup> RCW 82.04.462(3)(a); Rule 19402(402).</p>
	<p><sup>9</sup> RCW 82.04.462(3)(a); Rule 19402(402).</p>
	<p><sup>10</sup> See <a href="https://www.fcc.gov/reports-research/reports/internet-access-services-reports/internet-access-services-reports">https://www.fcc.gov/reports-research/reports/internet-access-services-reports/internet-access-services-reports</a>.</p>
	<p><sup>11</sup> These figures are derived from the Internet Access Services reports prepared by the FCC and reported in the table labeled "Connections by Type of End User by State." For example, the relevant information for 2014 is provided in Figure 33 of the report titled, Internet Access Services as of 12/31/14. The percentages in the above chart are yearly averages of the following fraction: (1) the number of Washington connections listed in the "Total" column divided by (2) the total sum of all internet connections excluding connections in U.S. territories (American Samoa, Guam, Northern Mariana Islands, and U.S. Virgin Islands).</p>
	<p><sup>13</sup> See Rule 19402(602).</p>