

State Ruling

203-171, Special Notice-- Business and occupation-- Constitutional limitations-- Nexus-- Economic nexus

¶203-171. Special Notice, Washington Department of Revenue, July 9, 2010.

Business and occupation: Constitutional limitations: Nexus: Economic nexus.-- Under the economic nexus standard adopted by Washington and effective June 1, 2010, advertising income and other apportionable income 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 advertising income will have nexus with Washington under the economic nexus standard 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 exceeding \$250,000; or at least 25% of its worldwide property, payroll, or sales.

Special Notice

WASHINGTON STATE DEPARTMENT OF REVENUE

JULY 9, 2010

New “Economic Nexus” in Washington State May Impact Advertising Agencies Located Elsewhere

Background

On June 1, 2010, Washington State's new economic nexus standard went into effect. The economic nexus standard may be met without a physical presence in Washington. Under the new economic nexus standard, advertising income, and other “apportionable” income you may receive from Washington, could become subject to Washington's business and occupation (B&O) tax on an apportioned basis.

New legislation

Second Engrossed Substitute Senate Bill 6143 (2ESSB 6143), Chapter 23 Laws of 2010 (Part I), establishes that businesses are no longer required to have a physical presence in Washington to have nexus. Businesses meeting the new economic nexus standard (described below) are required to obtain a Washington tax registration and begin paying Washington's Business & Occupation tax (B&O) on their income apportioned to Washington State.

Economic nexus taxable thresholds

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

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

Note: For purposes of calculating the property, payroll, and sales thresholds for the 2010 tax year, the entire 2010 calendar year is to be used. Starting June 1, 2010, a business will incur B&O tax on advertising income 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 Washington sales

in May, \$100,000 in June, and \$100,000 in July. Taxpayer X establishes nexus with Washington by exceeding the \$250,000 sales threshold and will owe B&O tax only on its Washington sales after June 1, 2010.

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

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 Washington Department of Revenue'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 listserv 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.

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