

State Ruling

## **203-155, Special Notice-- Business and occupation-- Constitutional limitations-- Nexus-- Economic nexus**

¶203-155. Special Notice, Washington Department of Revenue, May 28, 2010.

**Business and occupation: Constitutional limitations: Nexus: Economic nexus.**— Under the economic nexus standard recently adopted by Washington and effective June 1, 2010, service, royalty, and certain other income of businesses located outside the state 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. A business 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**

**MAY 28, 2010**

### **Tax Attorneys and CPAs New “Economic Nexus” in Washington State May Impact Your Clients**

#### **Overview**

Washington State's new economic nexus standard went into effect on June 1, 2010. For Service and Other, Royalty, and certain other business and occupation (B&O) tax classifications; economic nexus may be met without a business having physical presence in Washington. Under the new standard, income of many businesses located outside the state could become subject to Washington's B&O tax on an apportioned basis.

***Please share this information with any clients who may be affected.***

#### **New legislation**

Second Engrossed Substitute Senate Bill 6143 (2ESSB 6143), Chapter 23 Laws of 2010 (Section 104 of Part I) establishes that certain businesses are no longer required to have a physical presence in Washington to have nexus. Businesses meeting any of the thresholds outlined below have nexus with Washington State with regard to their “apportionable income” as outlined below. (Nexus for sales of tangible personal property as well as services sold at retail will continue to be based on physical presence.)

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

Under this new standard, a business has nexus 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 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 receipts in February, \$100,000 in June, and \$100,000 in July. Taxpayer X establishes nexus with Washington under 2ESSB 6143 in July for 2010 and will owe B&O tax only on income earned on or after June 1, 2010.

### **Apportionable activities and income**

The new apportionment method must be used for income reported under the following B&O tax classifications:

- Service and other activities
- Royalties
- Travel agents and tour operators
- International steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent
- Stevedoring and associated activities
- Disposing of low-level waste
- Title insurance producers, title insurance agents, or surplus line brokers
- Public or nonprofit hospitals
- Real estate brokers
- Research and development performed by nonprofit corporations or associations,
- Inspecting, testing, labeling, and storing canned salmon owned by another person
- Representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions chapter 48.17 RCW
- Contests of chance
- Horse races
- International investment management services
- Aerospace product development
- Printing or publishing a newspaper (but only with respect to advertising income),
- Printing materials other than newspapers and publishing periodicals or magazines (but only with respect to advertising income)
- Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development, but only with respect to activities that would be taxable as an “apportionable activity” if this special tax classification did not exist

### **“Trailing” nexus**

Once nexus has been established, it will continue:

- As long as the taxpayer continues to meet at least one of the thresholds; and
- For one year after the last year in which the taxpayer meets one of the thresholds.

### **Registering in Washington**

- Businesses that have 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](http://dor.wa.gov/EconomicNexus)**.

## **Affiliates**

Each affiliate (legal entity) must determine for itself whether it has nexus with Washington under this new standard. The state of Washington does not allow for determining nexus or tax reporting on a combined entity or consolidated basis.

## **Definitions**

**Property** - Real property, personal property, loan and credit card receivables, rented property, intangible property, and receivables. It does not include computer software, digital goods, or digital codes. 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** - Compensation for services, interest, fees, gains from trading securities, dividends, commissions, royalties, and other income. Sales are attributed to Washington if the customer receives the benefit of the service in Washington. If the taxpayer cannot determine where the benefit is received, there are a series of alternative attribution methods. See WAC 458-20-19402 for details on attributing sales income. The determination of where a financial institution attributes income is done per WAC 458-20-19404.

## **New apportionment methodology**

This legislation also provides a new single factor apportionment methodology based on sales. The new apportionment calculation is discussed in detail in WAC 458-20-19402, 19403, and 19404 available on the Department's website at: **[dor.wa.gov/EconomicNexus](http://dor.wa.gov/EconomicNexus)**.

## **For more information**

Visit the Department's website at: **[dor.wa.gov/EconomicNexus](http://dor.wa.gov/EconomicNexus)** or contact the Department's Telephone Information Center at: 1-800-647-7706.

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