

SALT Alert! 2015-20: Washington State: Recently Enacted Legislation Includes Certain Tax and Unclaimed Property Changes Affecting Business Taxpayers

On July 1, 2015, Governor Jay Inslee signed legislation that makes a number of changes to Washington State's business and occupation (B&O) tax and sales and use tax statutes. Key provisions of Engrossed Substitute Senate Bills 6138 (SSB 6138) and 6057 (SSB 6057) are summarized below. The nexus changes in SB 6138 are effective September 1, 2015. All other provisions in SB 6138 discussed below are effective August 1, 2015.

Repeal of the Preferential B&O Tax Rate for Royalty Income

Under current law, royalty income is subject to B&O tax at a 0.484 percent rate. Effective August 1, 2015, royalty income will be taxed at the general 1.5 percent "services and other" tax rate.

B&O Tax Nexus Changes

Under current law, factor-presence (economic) nexus standards apply to B&O taxpayers engaged in apportionable activities. "Apportionable activities" are different types of service activities defined with reference to particular B&O tax classification statutes. Specifically, persons engaged in apportionable activities are deemed to have substantial nexus with Washington State if the person meets one of the following criteria:

- The individual is a resident or domiciliary of Washington State;
- The business entity is organized or commercially domiciled in Washington State;
- The nonresident individual or business entity has in any tax year (1) more than \$53,000 of property in Washington, (2) more than \$53,000 of payroll in the state, (3) more than \$267,000 of Washington receipts, or (4) at least 25 percent of the person's total property, payroll, or receipts are in Washington. These thresholds are adjusted periodically for inflation. See Excise Tax Advisory 3195.2015.

Effective September 1, 2015, these standards are extended to taxpayers that are making wholesale sales into Washington State. Furthermore, SSB 6138 revises the law to state that the factor-presence standards are measured by a taxpayer's activities in the immediately preceding tax year. Thus, a wholesaler making more than \$267,000 (as adjusted) of wholesale sales in

Washington in a calendar year will be deemed to have nexus for the subsequent calendar year, even if it lacks a physical presence.

Click-Through Nexus

SSB 6138 also contains provisions enacting click-through nexus standards in Washington State effective September 1, 2015. Under these standards, a remote seller is presumed to have sales and use tax nexus and retailing B&O tax nexus with Washington State if the seller enters into an agreement with one or more Washington residents who, for a commission or other consideration, refer(s) prospective customers, directly or indirectly, to the remote seller via a link on their website or other means if cumulative gross receipts from retail sales to customers in the state through such agreements exceed \$10,000 in the preceding 12-month period. The presumption that nexus exists may be rebutted by proof that the in-state resident did not engage in any solicitation in Washington that would create nexus under U.S. Constitutional standards. Such proof may be shown by demonstrating, in a manner acceptable to the Department of Revenue, that the persons with whom the seller has an agreement are prohibited from engaging in solicitation and that they have complied with the prohibition.

Washington State Nexus Summary

Tax Type	Physical Presence Nexus	Economic Nexus for Nonresidents	Click Through Nexus (Rebuttable Presumption)	Resident or Domiciled in Washington
State & Local Retail Sales Tax	All Years		Eff. 9/1/2015	All Years
State Retailing B&O Tax	All Years		Eff. 9/1/2015	All Years
State Wholesaling B&O Tax	Eff. before 9/1/2015	Eff. 9/1/2015		All Years
State Services & Other B&O Tax	Eff. before 6/1/2010	Eff. 6/1/2010		All Years

Please note that the state nexus summary above does not include nexus standards for city B&O taxes, which are administered at the local level.

Manufacturing / R&D Machinery & Equipment Changes

Current Washington law provides an exemption from sales and use tax for machinery and equipment used directly in a manufacturing operation or research and development operation. Historically, prewritten computer software developers producing prewritten software delivered via tangible medium have qualified for the machinery and equipment exemption. The bill clarifies the definition of “manufacturer” to also include a person engaged in the development of prewritten computer software that is not transferred to purchasers by means of tangible storage media.

The bill further excludes an “ineligible person” from claiming the manufacturing exemption. An “ineligible person” is defined as all members of an affiliated group for which:

- (1) At least one member of the affiliated group was registered with the Department on or before July 1, 1981;
- (2) The group has a combined employment in Washington that exceeds 40,000 full and part-time employees; and
- (3) The business activities of the affiliated group primarily include development, sales, and licensing of computer software and services.

Late Payment Penalties Increase

Effective August 1, 2015, late payment penalties are increased by 4 percentage points to the following:

- 9 percent if the tax is not received by the due date;
- 19 percent if the tax is not received on or before the last day of the month following the due date; and
- 29 percent if the tax is not received on or before the last day of the second month following the due date.

Unclaimed Property Administrative Changes

SSB 6057 adopts multiple administrative changes to Washington’s unclaimed property laws, including electronic reporting requirements beginning July 1, 2016, revised penalty provisions, new refund and appeal provisions, and an unclaimed property amnesty program. Under the amnesty provisions, the Department must waive penalties and interest on amounts payable or property deliverable if before November 1, 2016, the holder completes an application for penalty and interest waiver, files a report that includes all property for which penalty and interest waiver is requested, and pays and delivers all amounts and property identified in the report. The amnesty does not apply to amounts or property that were paid, delivered, or reported to the Department before July 1, 2015.

Next Steps

Taxpayers with activities in Washington must consider whether they are affected by the new

nexus standards applicable to wholesaling activities and remote sales. For example, companies with no physical presence in Washington making sales for resale to an affiliated purchasing company in Washington may now have nexus for wholesaling B&O tax under the new standards. For more information on SSB 6138, please contact [Steve King](#) at 206-913-4881 or [Michele Baisler](#) 206-913-4117.

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