

WASHINGTON STATE SEEKS ADDITIONAL REVENUE

By Andrew J. Meyers, CPA

OVERVIEW

The Washington State Legislature stayed busy in 2010 by trying to find ways to fill a \$1 billion budget deficit after voters rejected their earlier push for increases on sales taxes for a myriad of consumer products, everything from candy, to bottled water, to your favorite soda-pop! As a result of the rejected tax increases, the legislature and governor had to undertake other methods, including across the board departmental cuts, as well as some creative revenue raising measures. They also looked for ways to increase taxpayer compliance. Here are the highlights...

Taxpayer Amnesty Program

The first ever Washington amnesty program was authorized during the legislature's one-day special session on December 11, 2010. The program is estimated to generate an additional \$24 million for the state.

Running from February 1 through April 30, 2011, the program allows both registered and unregistered businesses who participate to have most interest and penalties waived on the following types of taxes that become due prior to February 1, 2011:

- State Business & Occupation (B&O) Tax
- State and Local Sales & Use Tax
- State Public Utility Tax

In order to qualify for this program, a taxpayer must:

- File an application, and all related tax returns, (original or amended) by April 18 and pay all tax

due by April 30, 2011. This includes all taxes linked to the waiver request.

- Timely file all tax returns and pay all taxes due during the amnesty period.
- Pay all fees related to the filing of any tax warrants associated with a waiver request.
- Waive their right to contest the amount of tax due or petition for a refund of taxes paid under the program.

Amnesty is NOT available to taxpayers who have ever:

- Received an evasion penalty or a penalty for misusing a reseller permit or resale certificate.
- Acted as a defendant in a criminal prosecution related to an offense involving the failure to collect or remit the proper amount of any excise tax.

Also, taxpayers currently under bankruptcy protection are unable to apply for amnesty.

If the taxpayer is unable to meet all of the requirements of the program by April 30, 2011, all applicable interest and penalties will become due as if they were never enrolled in the program.

Any taxpayer considering the program should seek professional tax advice before contacting the Washington Department of Revenue (WADOR) and should be aware the WADOR may share information with the Internal Revenue Service or other taxing jurisdictions.

B&O Tax on Director's Fees

Beginning July 1, 2010, any person, whether a resident or a nonresident, acting in the roll of corporate director as a non-employee, who is found to have nexus under the state's new economic performance nexus standard will be subject to the B&O tax at a rate of 1.8% on all compensation received. Directors must register and report income with the Department of Revenue if the total value of their compensation exceeds \$12,000 per year.

The term "compensation" includes but is not limited to:

- Cash
- Stock options
- Property received
- Awards and bonuses
- Amounts received for the reimbursement of expenses

If subject to the tax, the taxpayer may be eligible to receive the small business B&O credit against any tax due, the maximum amount of the credit is \$840. Depending on the level of compensation, the director may be required to file on an annual, quarterly or monthly basis.

Employee directors will continue to be exempt from the tax as long as their compensation is for services rendered as an employee and their compensation is not split out and paid to the individual as an employee and director.

Corporations can elect to file composite returns on behalf of their directors.

Any taxpayer, who is a director of a Washington corporation and receives compensation for their services or reimbursement for expenses incurred in fulfilling their duties as director, should seek professional tax advice to determine if they have a filing requirement under this new law.

Services B&O Tax Rate Increases

The service and "other" activities B&O tax rate was increased 0.3% to 1.8% effective May 1, 2010. Under current law the rate is restored to 1.5% effective July 1, 2013.

Economic Nexus Rules Enacted

Washington adopted "economic nexus" rules effective June 1, 2010. The new rules have ramifications for businesses located in Washington and those headquartered outside Washington.

For out-of state businesses, physical presence in Washington is still required for retailers and wholesalers to have filing nexus. However, for service businesses, revenue will generally be taxable for B&O purposes if the client is located in Washington. Taxable revenue is apportioned based solely on a sales factor. To be taxable, the service business must also have one of the following:

- More than \$50,000 of property in Washington
- More than \$50,000 of payroll in Washington
- More than \$250,000 of gross income in Washington, or
- At least 25% of your total property, payroll or gross income in Washington

If you meet any of the above tests, you must register and pay tax.

For businesses located in Washington, you may be able to apportion service income out of state for purposes of the Washington B&O tax calculation. To apportion, you must either actually pay tax in the other state or have one of the following in the other state:

- More than \$50,000 of property
- More than \$50,000 of payroll
- More than \$250,000 of gross income, or
- At least 25% of your total property, payroll or gross income

Given the complexity of these new economic performance nexus rules, any person or entity providing services to any customer located in Washington should seek professional tax advice to determine how these new standards affect their business.

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For any questions or additional clarification, please contact your tax advisor or one of the Perkins & Co tax shareholders or managers:

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