

Sales/Use/Indirect:

Washington DOR Explains Order Invalidating Portions of B&O Tax Sourcing Rule and Refund Impact

Interim Guidance Statement, Wash. Dept. of Rev. (12/20/21). The Washington Department of Revenue (Department) issued guidance addressing the impact of a May 2021 Washington county court ruling that deemed Wash. Admin. Code section 458-20-19402 (*i.e.*, “Rule 19402”) – involving market sourcing and apportionment for state business and occupation (B&O) tax purposes – invalid to the extent it requires taxpayers to use proportional attribution for tax periods before June 12, 2014. In doing so, the Department explains that this court order does *not* impact Rule 19402 for periods on or after June 12, 2014, as the taxpayer’s underlying challenge and resulting court order involved the Department exceeding its authority with Rule 19402 for periods before the enactment of statutory amendments on June 12, 2014 that explicitly allow for proportional attribution.

URL: <https://dor.wa.gov/get-form-or-publication/publications-subject/tax-topics/interim-guidance-statement-regarding-att-services-inc-v-department-revenue>

The Department explains that because it did not appeal this recent county court order, B&O taxpayers potentially may qualify for a refund for taxes paid if:

- The taxpayer used proportional attribution, as instructed by Rule 19402, when calculating its receipts factor for periods before June 12, 2014, and
- This calculation resulted in overpayment of taxes for any relevant open period(s).

The Department warns that failure to submit a timely refund application may bar a potential refund claim. The Department also explains that it will review any refund requests implicating this recent court decision and pre-June 12, 2014 tax periods on a case-by-case basis, and plans to issue a related excise tax advisory (ETA) in early 2022 to further address the effects of the case. Please contact us with any questions.

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