

Sales/Use/Indirect:

Washington: Out-of-State Bank Deemed to Have B&O Tax Nexus Based on In-State Activities of Retailers

Case No. 17-109, Wash. Bd. of Tax App. (11/24/21). The Washington Board of Tax Appeals (Board) affirmed that an out-of-state bank had sufficient contacts with Washington to establish nexus for state business and occupation (B&O) tax purposes for the pre-2010 tax periods at issue “whether characterized as a ‘physical presence’ or not” based on attribution of the physical presence of third-party retailers with which the bank had private label credit card agreements, as well as the bank’s continuous and systematic use of Washington courts to advance its business interests in filing over 3,000 lawsuits in Washington courts. The Board additionally affirmed that an apportioned share of the bank’s income must be apportioned to Washington under the “service and other business activities” B&O tax classification. The bank unsuccessfully had claimed, among other arguments, that in asserting B&O nexus for the prior tax periods at issue, the Department was invalidly applying a 2010 legislative change involving economic nexus retroactively to it, and that prior to the legislative change, physical presence was required to impose B&O tax on an out-of-state financial institution. In the alternative, the bank unsuccessfully had argued that sourcing credit card interest and fees based on cardholder location is a constitutional violation because it “causes a fundamental mismatch of the activities giving rise to the production of the gross receipts and their apportionment.” Please contact us with any questions.

URL: <https://apps.bta.wa.gov/Decision%20PDF/Formal%20Dockets/17-109.pdf>

— Robert Wood (Seattle)
Senior Manager
Deloitte Tax LLP
robwood@deloitte.com

Myles Brenner (Seattle)
Senior Manager
Deloitte Tax LLP
mybrenner@deloitte.com

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