

Indirect/Sales/Use:

Washington Appellate Court Says Costs of Performance Sourcing Applies Under Prior B&O Tax Law

Case No. 55391-1-II, Wash. Ct. App., Div. 2 (4/5/22). In a case involving a company providing management and administrative services to medical professionals nationwide and having its three major offices located in Washington, Tennessee, and Texas, a Washington Court of Appeals (Court) reversed a lower court to hold that the City of Tacoma, Washington (City) appropriately calculated the company's service income factor under former business and occupation (B&O) tax law provisions in effect for the 2013 through 2017 tax years at issue using costs of performance, rather than basing it exclusively on the location of the taxpayer's customer contacts. In doing so, the Court reasoned that allowing the company "to avoid apportioning any service income to a city simply because it can establish that it has made some physical contacts with customers, even if those contacts are incidental to the bulk of the service income generating activity, is absurd and could not have been what the legislature intended when it designed this scheme to fairly apportion service income." Under the facts, most of the company's business services (*e.g.*, coding, billing, collections, claims, recordkeeping, etc.) did not require direct customer contact. The Court additionally explained that former Wash. Rev. Code section 35.102.130(3)(b) "provides equal alternatives for determining a taxpayer's service income factor that must be selected based on which alternative provides the most fair apportionment of service income and not rigidly as a cascading hierarchy." Please contact us with any questions.

URL: <https://www.courts.wa.gov/opinions/pdf/D2%2055391-1-II%20Published%20Opinion.pdf>

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