

## Sales/Use/Indirect:

### Washington DOR Addresses Potential Refunds for Use of Proportional Attribution in Calculating Receipts Factor

*Draft Excise Tax Advisory, ETA 3XXX.20XX*, Wash. Dept. of Rev. (12/22). The Washington Department of Revenue (Department) posted a draft excise tax advisory explaining the effect of a 2021 state court ruling that invalidated portions of Wash. Admin. Code section 458-20-19402 (Rule 19402) for Washington business and occupation (B&O) tax purposes for tax periods before June 12, 2014, including how a B&O taxpayer potentially may qualify for refunds as a result of the decision if it meets all the following criteria:

**URL:** [https://dor.wa.gov/sites/default/files/2022-12/DRAFT\\_ETA\\_XXXX.2022\\_ATT.pdf](https://dor.wa.gov/sites/default/files/2022-12/DRAFT_ETA_XXXX.2022_ATT.pdf)

1. The taxpayer used proportional attribution, as instructed by Rule 19402, when calculating its B&O tax receipts factor for periods before June 12, 2014,
2. This calculation resulted in overpayment of taxes for the relevant period(s), and
3. The taxpayer submits a refund application within the “nonclaim period.”

Regarding the “nonclaim period,” the Department explains that it cannot provide a refund or credit for taxes paid more than four years before the beginning of the calendar year in which:

1. A refund application is made, or
2. Examination of records by the Department is completed, unless the taxpayer and the Department have agreed to extend this time period.

The draft excise tax advisory also clarifies that the 2021 state court ruling does not impact Rule 19402 for periods on or after June 12, 2014. Lastly, the draft excise tax advisory explains how the applicable B&O tax statute’s “cascading steps” apply to tax periods from June 10, 2010 to June 11, 2014, without using proportional attribution and includes some illustrative examples. Please contact us with any questions.

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