
HOUSE BILL 1403

State of Washington

66th Legislature

2019 Regular Session

By Representatives Frame, Orcutt, and Stokesbary

Read first time 01/21/19. Referred to Committee on Finance.

1 AN ACT Relating to simplifying the administration of municipal
2 business and occupation tax apportionment; and amending RCW
3 35.102.130.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 35.102.130 and 2017 c 323 s 511 are each amended to
6 read as follows:

7 A city that imposes a business and occupation tax must provide
8 for the allocation and apportionment of a person's gross income,
9 other than persons subject to the provisions of chapter 82.14A RCW,
10 as follows:

11 (1) Gross income derived from all activities other than those
12 taxed as service or royalties must be allocated to the location where
13 the activity takes place.

14 (a) In the case of sales of tangible personal property, the
15 activity takes place where delivery to the buyer occurs.

16 (b)(i) In the case of sales of digital products, the activity
17 takes place where delivery to the buyer occurs. The delivery of
18 digital products will be deemed to occur at:

19 (A) The seller's place of business if the purchaser receives the
20 digital product at the seller's place of business;

1 (B) If not received at the seller's place of business, the
2 location where the purchaser or the purchaser's donee, designated as
3 such by the purchaser, receives the digital product, including the
4 location indicated by instructions for delivery to the purchaser or
5 donee, known to the seller;

6 (C) If the location where the purchaser or the purchaser's donee
7 receives the digital product is not known, the purchaser's address
8 maintained in the ordinary course of the seller's business when use
9 of this address does not constitute bad faith;

10 (D) If no address for the purchaser is maintained in the ordinary
11 course of the seller's business, the purchaser's address obtained
12 during the consummation of the sale, including the address of a
13 purchaser's payment instrument, if no other address is available,
14 when use of this address does not constitute bad faith; and

15 (E) If no address for the purchaser is obtained during the
16 consummation of the sale, the address where the digital good or
17 digital code is first made available for transmission by the seller
18 or the address from which the digital automated service or service
19 described in RCW 82.04.050 (2)(g) or (6)(c) was provided,
20 disregarding for these purposes any location that merely provided the
21 digital transfer of the product sold.

22 (ii) If none of the methods in (b)(i) of this subsection (1) for
23 determining where the delivery of digital products occurs are
24 available after a good faith effort by the taxpayer to apply the
25 methods provided in (b)(i)(A) through (E) of this subsection (1),
26 then the city and the taxpayer may mutually agree to employ any other
27 method to effectuate an equitable allocation of income from the sale
28 of digital products. The taxpayer will be responsible for petitioning
29 the city to use an alternative method under this subsection
30 (1)(b)(ii). The city may employ an alternative method for allocating
31 the income from the sale of digital products if the methods provided
32 in (b)(i)(A) through (E) of this subsection (1) are not available and
33 the taxpayer and the city are unable to mutually agree on an
34 alternative method to effectuate an equitable allocation of income
35 from the sale of digital products.

36 (iii) For purposes of this subsection (1)(b), the following
37 definitions apply:

38 (A) "Digital automated services," "digital codes," and "digital
39 goods" have the same meaning as in RCW 82.04.192;

1 (B) "Digital products" means digital goods, digital codes,
2 digital automated services, and the services described in RCW
3 82.04.050 (2)(g) and (6)(c); and

4 (C) "Receive" has the same meaning as in RCW 82.32.730.

5 (c) If a business activity allocated under this subsection (1)
6 takes place in more than one city and all cities impose a gross
7 receipts tax, a credit must be allowed as provided in RCW 35.102.060;
8 if not all of the cities impose a gross receipts tax, the affected
9 cities must allow another credit or allocation system as they and the
10 taxpayer agree.

11 (2) Gross income derived as royalties from the granting of
12 intangible rights must be allocated to the commercial domicile of the
13 taxpayer.

14 (3) Gross income derived from activities taxed as services shall
15 be apportioned to a city by multiplying apportionable income by a
16 fraction, the numerator of which is the payroll factor plus the
17 service-income factor and the denominator of which is two.

18 (a) The payroll factor is a fraction, the numerator of which is
19 the total amount paid in the city during the tax period by the
20 taxpayer for compensation and the denominator of which is the total
21 compensation paid everywhere during the tax period. Compensation is
22 paid in the city if:

23 (i) The individual is primarily assigned within the city;

24 (ii) The individual is not primarily assigned to any place of
25 business for the tax period and the employee performs fifty percent
26 or more of his or her service for the tax period in the city; or

27 (iii) The individual is not primarily assigned to any place of
28 business for the tax period, the individual does not perform fifty
29 percent or more of his or her service in any city, and the employee
30 resides in the city.

31 (b) The service income factor is a fraction, the numerator of
32 which is the total service income of the taxpayer in the city during
33 the tax period, and the denominator of which is the total service
34 income of the taxpayer everywhere during the tax period. Service
35 income is in the city if((÷

36 ~~(i))~~ the customer location is in the city~~((÷ or~~

37 ~~(ii) The income-producing activity is performed in more than one~~
38 ~~location and a greater proportion of the service-income-producing~~
39 ~~activity is performed in the city than in any other location, based~~

1 ~~on costs of performance, and the taxpayer is not taxable at the~~
2 ~~customer location; or~~

3 ~~(iii) The service-income-producing activity is performed within~~
4 ~~the city, and the taxpayer is not taxable in the customer location)).~~

5 (c) Gross income of the business from engaging in an
6 apportionable activity must be excluded from the denominator of the
7 service income factor if, in respect to such activity, at least some
8 of the activity is performed in the city, and the gross income is
9 attributable under (b) of this subsection (3) to a city or
10 unincorporated area of a county within the United States or to a
11 foreign country in which the taxpayer is not taxable. For purposes of
12 this subsection (3)(c), "not taxable" means that the taxpayer is not
13 subject to a business activities tax by that city or county within
14 the United States or by that foreign country, except that a taxpayer
15 is taxable in a city or county within the United States or in a
16 foreign country in which it would be deemed to have a substantial
17 nexus with the city or county within the United States or with the
18 foreign country under the standards in RCW 35.102.050 regardless of
19 whether that city or county within the United States or that foreign
20 country imposes such a tax.

21 (d) If the allocation and apportionment provisions of this
22 subsection (3) do not fairly represent the extent of the taxpayer's
23 business activity in the city ((~~or cities in which the taxpayer does~~
24 business)), the taxpayer may petition for or the tax ((~~administrators~~
25 may jointly require, in respect to all or any part of the taxpayer's
26 business activity, that one of the following methods be used jointly
27 by the cities to allocate or apportion gross income)) administrator
28 may require, in respect to all or any part of the taxpayer's business
29 activity, if reasonable:

30 (i) Separate accounting;

31 (ii) The ((~~use of a single factor~~)) exclusion of any one or more
32 of the factors;

33 (iii) The inclusion of one or more additional factors that will
34 fairly represent the taxpayer's business activity in the city; or

35 (iv) The employment of any other method to effectuate an
36 equitable allocation and apportionment of the taxpayer's income.

37 (e) The party petitioning for, or the tax administrator
38 requiring, the use of any method to effectuate an equitable
39 allocation and apportionment of the taxpayer's income pursuant to

1 subsection (d) of this subsection (3) must prove by a preponderance
2 of the evidence:

3 (i) That the allocation and apportionment provisions of this
4 subsection (3) do not fairly represent the extent of the taxpayer's
5 business activity in the city; and

6 (ii) That the alternative to such provisions is reasonable.

7 The same burden of proof shall apply whether the taxpayer is
8 petitioning for, or the tax administrator is requiring, the use of an
9 alternative, reasonable method to effectuate an equitable allocation
10 and apportionment of the taxpayer's income.

11 (f) If the tax administrator requires any method to effectuate an
12 equitable allocation and apportionment of the taxpayer's income, the
13 tax administrator cannot impose any civil or criminal penalty with
14 reference to the tax due that is attributable to the taxpayer's
15 reasonable reliance solely on the allocation and apportionment
16 provisions of this subsection (3).

17 (g) A taxpayer that has received written permission from the tax
18 administrator to use a reasonable method to effectuate an equitable
19 allocation and apportionment of the taxpayer's income shall not have
20 that permission revoked with respect to transactions and activities
21 that have already occurred unless there has been a material change
22 in, or a material misrepresentation of, the facts provided by the
23 taxpayer upon which the tax administrator reasonably relied in
24 approving a reasonable alternative method.

25 (4) The definitions in this subsection apply throughout this
26 section.

27 (a) "Apportionable income" means the gross income of the business
28 taxable under the service classifications of a city's gross receipts
29 tax, including income received from activities outside the city if
30 the income would be taxable under the service classification if
31 received from activities within the city, less any exemptions or
32 deductions available.

33 (b) "Business activities tax" means a tax measured by the amount
34 of, or economic results of, business activity conducted in a city or
35 county within the United States or within a foreign country. The term
36 includes taxes measured in whole or in part on net income or gross
37 income or receipts. "Business activities tax" does not include a
38 sales tax, use tax, or a similar transaction tax, imposed on the sale
39 or acquisition of goods or services, whether or not denominated a

1 gross receipts tax or a tax imposed on the privilege of doing
2 business.

3 (c) "Compensation" means wages, salaries, commissions, and any
4 other form of remuneration paid to individuals for personal services
5 that are or would be included in the individual's gross income under
6 the federal internal revenue code.

7 ~~((e))~~ (d) "Customer" means a person or entity to whom the
8 taxpayer makes a sale or renders services or from whom the taxpayer
9 otherwise receives gross income of the business.

10 (e) "Individual" means any individual who, under the usual common
11 law rules applicable in determining the employer-employee
12 relationship, has the status of an employee of that taxpayer.

13 ~~((d))~~ (f) "Customer location" means the ~~((city—or~~
14 ~~unincorporated area of a county where the majority of the contacts~~
15 ~~between the taxpayer and the customer take place))~~ following:

16 (i) For a customer not engaged in business, if the service
17 requires the customer to be physically present, where the service is
18 performed.

19 (ii) For a customer not engaged in business, if the service does
20 not require the customer to be physically present:

21 (A) The customer's residence; or

22 (B) If the customer's residence is not known, the customer's
23 billing/mailing address.

24 (iii) For a customer engaged in business:

25 (A) Where the services are ordered from;

26 (B) At the customer's billing/mailing address if the location
27 from which the services are ordered is not known; or

28 (C) At the customer's commercial domicile if none of the above
29 are known.

30 ~~((e))~~ (g) "Primarily assigned" means the business location of
31 the taxpayer where the individual performs his or her duties.

32 ~~((f))~~ (h) "Service-taxable income" or "service income" means
33 gross income of the business subject to tax under either the service
34 or royalty classification.

35 ~~((g))~~ (i) "Tax period" means the calendar year during which tax
36 liability is accrued. If taxes are reported by a taxpayer on a basis
37 more frequent than once per year, taxpayers shall calculate the
38 factors for the previous calendar year for reporting in the current
39 calendar year and correct the reporting for the previous year when

1 the factors are calculated for that year, but not later than the end
2 of the first quarter of the following year.

3 ~~((h) "Taxable in the customer location" means either that a
4 taxpayer is subject to a gross receipts tax in the customer location
5 for the privilege of doing business, or that the government where the
6 customer is located has the authority to subject the taxpayer to
7 gross receipts tax regardless of whether, in fact, the government
8 does so.))~~

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