



This Week in State Tax (TWIST)

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Washington State: Amended Apportionment Rule Confirms Look-Through Approach

The Washington State Department of Revenue has revised WAC 458-20-19402, which addresses how to determine the portion of a business' apportionable income that is derived from business activities in Washington State. The rule was adopted May 15, 2024, and becomes effective June 15, 2024. Under Washington law, receipts from performing services are generally sourced to the location where the taxpayer's customer receives the benefit of the taxpayer's service. Not surprisingly, there have been disputes between taxpayers and the Department of Revenue as to how to make this determination. Recall, in the Lending Tree decision, an appeals court held that online loan referral services were received at the location where the lenders (the taxpayer's direct customers) received and utilized the information contained in a referral to generate a potential loan for a borrower. The Department had argued that the appropriate location was the location of the borrower.

There are substantial changes in the revised rule from earlier iterations; certain of the more extensive revisions address when a taxpayer is providing a service (not related to real or tangible property) to a customer engaged in business, and the service relates to the customer's business activities. In this situation, the customer is deemed to receive the benefit of the service where the customer's related business activities occur. New language in the rule provides that "a customer's related business activities will generally occur either in the customer's market or at the customer's business location." The determination of a customer's market depends on the customer's facts and circumstances, but the rule provides that the customer's related business activities occur in the customer's market if the service is: (A) Promoting the customer's products (goods and services); (B) Engaging in or completing sales of the customer's products; (C) Obtaining or facilitating payment of amounts owed to the customer from the sale of its products; or (D) Establishing or maintaining the customer's market. The revised rule also provides guidance on determining the customer's related business location. There are several new examples in the revised rule, including one that addresses sourcing fees received for managing a mutual fund, which is an example of an instance in which a service is helping to establish or maintain a market for the mutual fund customer. The example concludes that it is reasonable to assume that the mutual fund company's market is where its investors are located. As such, the Investment Manager will attribute its receipts from managing the fund to those investor locations. In another example, a company provides network support services to its customer. The support services develop and maintain the computer network and applications which enable employees to do their jobs and perform certain administrative tasks. The customer's related business activities would be at the locations of its employees which, in the example, were all in a single state. Please contact [Michele Baisler](#) with questions regarding the revised rule.

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