

Gross Receipts:

Washington Appellate Court Affirms Bank's In-State Activities Satisfied B&O Tax Physical Presence Nexus Requirement

Case No. 57127-7-II, Wash. Ct. App. (11/14/23). In an unpublished opinion involving an out-of-state bank that did not have a place of business or any employees or property within Washington for the 2007 through 2010 tax periods at issue, a Washington Court of Appeals (Court) affirmed the Washington Board of Tax Appeals' summary judgment in favor of the Washington Department of Revenue that the bank satisfied the requisite in-state physical presence nexus standard for Washington business and occupation (B&O) tax purposes in two ways:

URL: <https://www.courts.wa.gov/opinions/pdf/D2%2057127-7-II%20Unpublished%20Opinion.pdf>

- Having a contractual relationship with retailers to promote private label credit cards issued by the bank to Washington consumers, and
- Continuously using Washington courts to collect unpaid debts from Washington residents.

In doing so, the Court explained that although before June 2010, a physical presence requirement existed for the imposition of B&O taxes on out-of-state businesses, the bank's in-state activities satisfied this physical presence requirement. Moreover, the Court concluded that the apportionment formula provided under Wash. Admin. Code section 458-20-14601(2)(b) was the correct formula to use to apportion the bank's gross income to Washington for B&O tax purposes – in this case, apportioning the bank's income to Washington based on the billing addresses of the bank cardholders – and this regulation was *not invalid or unconstitutional* as applied to the bank. Please contact us with any questions.

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