

Gross Receipts:

Washington DOR Addresses 2024 Decision that Denied Investment Income Deduction Claimed by Investment Funds

Tax Topic: Investments, Wash. Dept. of Rev. (1/14/25). Referencing a 2024 Washington Supreme Court holding that investment income earned by sixteen investment funds did not qualify for a former deduction from the measure of Washington business and occupation (B&O) taxes [see Case No. 102223-9, Wash. (10/24/24), and previously issued Multistate Tax Alert for more details on this decision], Washington Department of Revenue (Department) guidance explains that this B&O tax deduction for amounts derived from incidental investments “is limited to income that is earned through investments that are incidental to the main purpose of the taxpayer’s business.” The Department explains that a taxpayer “cannot deduct investment income if the investment activity generating the income is the main business activity of the taxpayer.” To this end, the guidance provides that as a “safe harbor,” the Department “will presume that an investment activity is not the main activity of a taxpayer if it generated less than 5% of the taxpayer’s annual gross receipts.” Conversely, taxpayers “have the burden of proving an investment activity is not the main business activity if the income from the activity exceeds the safe harbor.” Therefore, “a taxpayer with investment activity income that falls outside of the safe harbor must establish that the income was generated from an incidental investment of the taxpayer’s surplus funds.” In determining whether investment activity is “incidental,” the guidance provides that a taxpayer’s “facts and circumstances at and prior to the time of filing will be relevant.”

[URL: https://dor.wa.gov/forms-publications/publications-subject/tax-topics/investments](https://dor.wa.gov/forms-publications/publications-subject/tax-topics/investments)

[URL: https://www.courts.wa.gov/opinions/pdf/1022239.pdf](https://www.courts.wa.gov/opinions/pdf/1022239.pdf)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-washington-state-supreme-court-determines-investment-income.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/multistate-tax-alert-washington-state-supreme-court-determines-investment-income.pdf)

Moreover, the guidance states that such deduction “does not generally apply to amounts received from loans, the extension of credit, revolving credit arrangements, installment sales, and similar interest income.” Furthermore, the deduction generally is “not available for banking business, lending business, or security business.” Lastly, the guidance explains that while gross income from rendering services – such as investment advisory services – generally is subject to service and other activities B&O tax, such income is *not* deductible as amounts derived from incidental investments because it is derived from services rather than from investments. Please contact us with any questions.

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